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CERTIFICATION:
COMPLIANCE THAT THE ADOPTED RULES COMPLY WITH THE COMMODITY
EXCHANGE ACT (CEA) AND THE REGULATIONS THEREUNDER

ICE Clear Europe Limited, a derivatives clearing organization registered with the Commodity Futures Trading Commission, hereby certifies that the documents: (i) *FXBlineRules140711*; and, (ii) *FXProcedures140711* ("the FX Rules and Procedures") submitted herewith, scheduled to be effective on 14 October 2011, comply with the Commodity Exchange Act and the regulations thereunder.

In witness whereof, the undersigned has signed this Certification as of the 14th day of July 2011.

By: 

Name: Patrick Davis

Title: Company Secretary



ICE Clear Europesm

Clearing Rules

31 MAY 2014 [FX CLEARING]

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Part 1 General Provisions

Rule 101 *Definitions*

The term "**Accounting Standards**" means applicable accounting standards and principles.

The term "**Affected FM Party**" means a Person prevented, hindered or delayed by a Force Majeure Event.

The term "**Affiliated Person**" or "**Affiliate**" means, with respect to any specified Person, any other Person that Controls, is Controlled by, or is under common Control with, such specified Person.

The term "**Appeals Panel**" means the panel at which an appeal of a decision of a Disciplinary Panel is heard pursuant to Rule 1005.

The term "**Applicable Law**" means any applicable national, federal, supranational, state, regional, provincial, local or other statute, law, ordinance, regulation, rule, code, guidance, order, published practice or concession, judgment or decision of a Governmental Authority and, for the avoidance of doubt, includes all the provisions of the FSA Rules.

The term "**Approved Financial Institution**" means a credit institution, bank, trust company or other institution which is an "institution" as defined in the Settlement Finality Regulations and which has been designated as an approved financial institution by the Clearing House.

The term "**Assessment Contribution**" means an Energy Assessment Contribution ~~or~~ a CDS Assessment Contribution or an FX Assessment Contribution.

The term "**Banking Consolidation Directive**" means Directive 2006/48/EC.

The term "**Bilateral CDS Transaction**" means: (i) a CDS transaction between two CDS Clearing Members or (ii) a CDS transaction between a CDS Clearing Member and an Affiliate of a different CDS Clearing Member or (iii) a CDS transaction between an Affiliate of a CDS Clearing Member and an Affiliate of a different CDS Clearing Member, (to which in either case, for the avoidance of doubt, the Clearing House is not a party).

The term "**Board**" means the board of Directors or any other body established thereunder (whether called a board, a committee or otherwise) of the Clearing House.

The term "**Business Day**" means a day on which the Clearing House is open for business or, in relation to deliveries, has the meaning given in the Procedures or, in relation to certain Contract Terms, has the meaning given in the Procedures or ICE Futures Europe Rules.

The term "**Buyer**" means, in relation to deliveries under Part 7, the Clearing Member or the Clearing House, whichever is obliged to receive delivery of a Commodity (whether itself or through another Person).

The term "**Buying Clearing Member**" means: (a) the Clearing Member that was, before formation of a Contract, party to the corresponding Transaction as buyer (or, in relation to CDS Contracts, protection buyer or, in relation to FX Contract, Party A); (b) where a Clearing Member's Customer is a party to the corresponding Transaction as buyer ~~or~~ protection buyer or Party A (as applicable), the Clearing Member that provides clearing

services to that Customer in relation to the Transaction in question (or, for Energy Contracts, if more than one such Clearing Member exists, the Clearing Member that was selected by the Customer for the initial booking of that Transaction); or (c) in relation to Energy Contracts only, where one Clearing Member that would be the Buying Clearing Member in accordance with (a) or (b) above has allocated an Energy Transaction to another Clearing Member for clearing in accordance with Market Rules, the Clearing Member to whom such Energy Transaction is allocated.

The term "**Call**", in respect of an Energy Contract, means an Option pursuant to which a Person with a Long position has the right to buy a Future or Futures from a Person with a Short position at the Strike Price and at a specified time.

The term "**Capital**" has the same meaning as the term "own funds", as such term is defined in the Banking Consolidation Directive and applicable on a stand-alone (non-consolidated) basis and subject to the limits and deductions set out therein and, in relation to matters reserved for member states, as implemented in the United Kingdom, whether or not the relevant Clearing Member is subject to the Banking Consolidation Directive or the supervision of the FSA and such other classes of Capital as are permitted at the Clearing House's discretion pursuant to the Procedures.

The term "**CDS**" means credit default swap.

The term "**CDS Assessment Amount**" means the total amount of all CDS Assessment Contributions payable by CDS Clearing Members pursuant to Rule 1106 in respect of an Event of Default.

The term "**CDS Assessment Contribution**" has the meaning set out in Rule 1106.

The term "**CDS Clearing Member**" means a Clearing Member that is authorised by the Clearing House to become party to CDS Contracts.

The term "**CDS Contract**" means a Contract that is a CDS that is cleared in accordance with the Procedures or is otherwise described as a CDS Contract under the Procedures and may be in the form of a CDS relating to an index or a single reference entity or in the form of a Component Transaction (as defined in Part 15).

The term "**CDS Default Amount**" has the meaning set out in Rule 1103(~~de~~)(iii).

The term "**CDS Guaranty Fund**" means the guaranty fund established and maintained pursuant to Part 11 relating to the Clearing of CDS Contracts.

The term "**CDS Guaranty Fund Contribution**" means a Guaranty Fund Contribution relating to the CDS Guaranty Fund.

The term "**CDS Sub-Account**" means, in relation to a CDS Clearing Member, each account at the Clearing House with a unique identification number used by that CDS Clearing Member in accordance with an election under Rule 406(d) for the recording of details of CDS Contracts with the Clearing House, which account is linked to an account at Deriv/SERV for the recording of details of trades relating to such CDS Contracts and which account is further linked to the CDS Clearing Member's Proprietary Account or Customer Account.

The term "CFTC" means the Commodity Futures Trading Commission of the United States of America, or any successor thereto.

The term "**Chairman**" means the chairman of the Board from time to time.

The term "**Circular**" means a publication issued by the Clearing House for the attention of all Clearing Members and posted on the Clearing House's website in accordance with Rule 109(g).

The term "**Clearing**" means the central counterparty, risk, Open Contract Position, Margin, settlement, delivery, administrative, acceptance, transaction data, settlement price establishment and other functions of the Clearing House pursuant to these Rules.

The term "**Clearing House**" means ICE Clear Europe Limited, a company registered in England & Wales with registered number 06219884.

The term "**Clearing House Account**" means an account of the Clearing House at an Approved Financial Institution.

The term "**Clearing House CDS Contributions**" means the Clearing House CDS GF Contribution and the Clearing House CDS Initial Contribution.

The term "**Clearing House CDS GF Contribution**" means amounts allocated by the Clearing House as being applicable following an Event of Default in accordance with Rule 1103(c)(v)(B) or 1103(fg)(v)(C) and as maintained pursuant to Rule 1104(e) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House CDS Initial Contribution**" means amounts allocated by the Clearing House as being applicable following an Event of Default in accordance with Rule 1103(c)(iv) or 1103(fg)(iv)(B) and as maintained pursuant to Rule 1104(e) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House Contributions**" means the Clearing House Energy Contributions and the Clearing House CDS Contributions ~~and the Clearing House Energy Initial Contribution.~~

The term "**Clearing House Energy Contributions**" means the Clearing House Energy GF Contribution and the Clearing House Energy Initial Contribution.

The term "**Clearing House Energy GF Contribution**" means amounts allocated by the Clearing House as being applicable following an Event of Default in accordance with Rule 1103(b)(v)(B) or 1103(fg)(v)(B) and as maintained pursuant to Rule 1104(e) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House Energy Initial Contribution**" means amounts allocated by the Clearing House as being applicable following an Event of Default in accordance with Rule 1103(b)(iv) or 1103(fg)(iv)(A) and as maintained pursuant to Rule 1104(e) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing Member**" means a Person which has entered into a Clearing Membership Agreement with the Clearing House and which has been admitted as a clearing member pursuant to Part 2 of these Rules.

The term "**Clearing Membership Agreement**" means an agreement between the Clearing House and a Clearing Member under which, *inter alia*, the Clearing House agrees to provide Clearing in respect of Contracts to that Clearing Member and that Clearing Member agrees to be bound by and subject to these Rules.

The term "**Clearing Organisation**" means any clearing house duly authorised, regulated, recognised or licensed under Applicable Laws in any jurisdiction, including any recognised clearing house, recognised overseas clearing house, derivatives clearing organisation or similar entity.

The term "**Clearing Processing System**" means the clearing processing system used by the Clearing House and any Market from time to time.

The term "**CLS**" means CLS Bank International.

The term "**Commodity**" means any kind of property which is capable of being delivered pursuant to an Energy Contract.

The term "**Complaints Procedures**" means the complaints procedures of the Clearing House from time to time.

The term "**Concentration Bank**" means an Approved Financial Institution at which the Clearing House has an account or accounts for the purpose of making transfers between Clearing House Accounts.

The term "**Contract**" means a contract falling into a Contract Category between the Clearing House and a Clearing Member arising in accordance with these Rules, and as amended, subject to netting or aggregation in accordance with these Rules, the terms and conditions of which are the relevant Contract Terms.

The term "**Contract Category**" means any of the three categories of Contract cleared by the Clearing House, namely Energy Contracts, CDS Contracts, and FX Contracts.

For the definition of the term "**Contract Position**", see 'Open Contract Position' below.

The term "**Contract Terms**" means all the terms and conditions of a Contract, as applicable, in: (i) (in relation to Energy Contracts only) the general conditions set out in the Rules and Procedures; (ii) (in relation to ICE Futures Europe Contracts only) the ICE Futures Europe Rules; (iii) (in relation to ICE OTC Contracts only) the specific standard terms and eligibility criteria set out in the Procedures for the class of Contract involved, the ICE OTC Participant Agreement between the Clearing Member and ICE Inc. and any relevant ICE OTC Broker Agreement; (iv) (except in relation to Energy Contracts which are settled only in cash) if such Energy Contract becomes deliverable, the relevant delivery Procedures for the class of Energy Contract and ICE Futures Rules; ~~and~~ (v) for CDS Contracts, the terms specified pursuant to Rule ~~4502.1502~~; and (vi) for FX Contracts, the general conditions set out in the Rules and Procedures.

The term "**Control**" means the rights and powers exercised over a Person by a Controller and its cognate terms shall be construed accordingly.

The term "**Controller**" has the meaning given to that term in section 422 of the FSMA.

The term "**Controller Guarantee**" means a guarantee given by a Controller of a Clearing Member under Rule 201(a)(vi).

The term "**Credit Derivatives Definitions**" means the document of that name dated 2003 published by ISDA as supplemented by the 2009 ISDA Credit Derivatives Determination Committees, Auction Settlement and Restructuring Supplement to the Credit Derivatives Definitions (published on 14 July 2009) and the Credit Derivatives Determinations Committees Rules as published by ISDA from time to time, including as supplemented or modified by incorporation of any additional provisions thereto (howsoever described) under, and as amended by, the Contract Terms for any relevant CDS Contract from time to time.

The term "**Customer**" means a Person who is a client or customer of a Clearing Member.

The term "**Customer Account**" means an account (if any) with the Clearing House opened in the name of a Clearing Member relating to Contracts to which the Clearing Member is a party as a result of it acting for one or more Customers (whose transactions the Clearing Member requests be recorded in the Customer Account) and in which such Contracts are recorded and to which monies in respect of such Contracts are debited and credited, which may be divided for administrative convenience only into sub-accounts relating to different Customers or groups of Customers or may be designated for Energy Contracts only, for CDS Contracts only or for ~~CDS~~ Contracts only or for ~~CDS~~ Contracts only. Where a Clearing Member provides services for DCM Customers, it shall have a separate DCM Customer Account for Contracts and monies relating to DCM Customers and Non-DCM Customer Account for Contracts and monies relating to Non-DCM Customers. A Customer Account must be either a Non-DCM Customer Account or a DCM Customer Account.

The term "**DCM Customer**" means any Customer that is a customer (as defined in the U.S. Commodity Futures Trading Commission Regulation 1.3(k)) of a Clearing Member with respect to any Contract arising as a result of a Transaction in a Future or an Option traded on or subject to the rules of a U.S. designated contract market or derivatives transaction execution facility (as provided for in Sections 5 or 5a, respectively, of the U.S. Commodity Exchange Act). A Person may be a DCM Customer in relation to certain Contracts and a Non-DCM Customer in relation to other Contracts.

The term "**DCM Customer Account**" means an account (if any) with the Clearing House (in its capacity as a registered U.S. derivatives clearing organization clearing Contracts traded on a registered U.S. designated contract market), the books and records of which are located in the United States of America, opened in the name of the Clearing Member (acting in its capacity as a clearing member in relation to transactions connected with the provision of services to DCM Customers where segregation of related collateral is required in accordance with Section 4d of the U.S. Commodity Exchange Act, as amended and insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder and entering into market contracts in the capacity of a clearing member in relation only to transactions connected with the provision of services to DCM Customers) relating to Contracts to which the Clearing Member is a party as a result of it acting for one or more DCM Customers (whose transactions the Clearing Member requests be recorded in the DCM Customer Account where the same is required in accordance with the segregation provisions of Section 4d of the U.S. Commodity Exchange Act, as amended and insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder) and in which such Contracts are recorded and to which monies in respect of such Contracts are debited and credited, which may be divided for

administrative convenience only into sub-accounts relating to different Customers or groups of Customers.

The term "**Default Amount**" means any of the Energy Default Amount, the CDS Default Amount or the FX Default Amount, as the context requires, and "**Default Amounts**" means any two of the foregoing or all of them, as the context requires.

The term "**Default Notice**" means a notice issued by the Clearing House under Rule 901(c).

The term "**Defaulter**" means a Person in respect of whom a Default Notice has been issued.

The term "**Delivery Facility**" means any Person or facility used for the delivery of Commodities (excluding Transferors and Transferees).

The term "**Deriv/SERV**" means The Depository Trust & Clearing Corporation's system for storage and processing of trade information in relation to CDS, currently known as Deriv/SERV, or any successor thereto.

The term "**Director**" means a director of the Clearing House.

The term "**Disciplinary Panel**" means a disciplinary panel established pursuant to Rule 1003.

The term "**Disclosed Principal Member**" means, where a Clearing Member acts as agent for a disclosed principal in respect of its Energy Contract clearing business and such principal has been admitted by the Clearing House as a Disclosed Principal Member, that principal.

The term "**Dispute**" means any dispute, difference, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise) arising out of, in relation to, or in connection with these Rules or any Contract, including any dispute as to the existence, construction, validity, interpretation, enforceability, termination or breach of these Rules or any Contract.

The term "**EFPs**" means 'exchange for physicals' under the ICE Futures Europe Rules.

The term "**EFSS**" means 'exchange for swaps' under the ICE Futures Europe Rules.

The term "**Eligible Complaint**" means a complaint which is eligible pursuant to the Complaints Procedures.

The term "**Eligible Currencies**" means USD, EUR, GBP and such other currencies as are specified as such by the Clearing House from time to time.

The term "**Encumbrance**" means any claim, charge, mortgage, security, lien, equity, beneficial interest, power of sale, option or other right to purchase, usufruct, hypothecation, retention of title, right of pre-emption or other third party right or security interest of any kind or an agreement to create any of the foregoing.

The term "**Energy Assessment Amount**" means the total amount of all Energy Assessment Contributions payable by Energy Clearing Members pursuant to Rule 1105(a) in respect of an Event of Default.

The term "**Energy Assessment Contribution**" has the meaning set out in Rule 1105(b).

The term "**Energy Clearing Member**" means a Clearing Member that is authorised by the Clearing House to become party to Energy Contracts.

The term "**Energy Contracts**" means Contracts that are not CDS Contracts or FX Contracts.

The term "**Energy Default Amount**" has the meaning set out in Rule 1103(~~de~~)(~~ii~~).

The term "**Energy Guaranty Fund**" means the guaranty fund established and maintained pursuant to Part 11 relating only to Energy Contracts.

The term "**Energy Guaranty Fund Contribution**" means a Guaranty Fund Contribution relating to the Energy Guaranty Fund.

The term "**Energy Transaction**" means an ICE Futures Europe Transaction or an ICE OTC Transaction.

The term "**EUR**" means the euro, or any other lawful currency that is a successor to it.

The term "**Event of Default**" has the meaning set out in Rule 901 and the term "**Default**" shall be construed accordingly.

The term "**Exchange**" means any exchange or similar body duly authorised, regulated, recognised or licensed (to the extent necessary) under Applicable Laws in any jurisdiction, including, but not limited to, any recognised investment exchange, recognised overseas investment exchange, designated investment exchange, designated contract market, exempt commercial market, regulated market, swap execution facility, alternative trading system, multilateral trading facility, trade affirmation or confirmation platform or similar entity.

The term "**Financial Collateral Regulations**" means the Financial Collateral Arrangements (No. 2) Regulations 2003 (which implement Directive 2002/47/EC on financial collateral arrangements).

The term "**Financial Emergency**" means, with respect to any Clearing Member, any situation in which the financial or operational condition of such Clearing Member is not or is likely not to be, in either case determined at the discretion of the Clearing House, adequate for such Clearing Member to meet its obligations (including, without limitation, its obligations to comply with these Rules) or to engage in business, or is such that it would not be in the best interests of the Clearing House or the marketplace for such Clearing Member to continue to be a Clearing Member.

The term "**Financial Indebtedness**" means any indebtedness for or in respect of: (a) monies borrowed; (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent; (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument; (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with applicable accounting standards, be treated as a finance or capital lease; (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis); (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing; (g) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and (h) the amount of any

liability in respect of any guarantee or indemnity for any of the items referred to in (a) to (g) above.

The term "**Force Majeure Event**" means any occurrence outside the control of the Clearing House or the relevant Clearing Member, as applicable, which hinders or prevents the performance in whole or in part of any of its obligations hereunder (other than, for an Energy Contract or FX Contract or any obligation relating to an Energy Contract or FX Contract, an obligation to make payments in an Eligible Currency) (and, in relation only to any obligation in connection with a CDS Contract of the Clearing House or a CDS Clearing Member under the Master Agreement that is part of the relevant Contract Terms which obligation has not yet fallen due, such an occurrence which would hinder or prevent performance in whole or in part of any of its obligations thereunder were the occurrence or effects of the occurrence to continue until the date of performance of the relevant obligation), including, but not limited to, fire, flood, storm, earthquake, explosion, war, hostilities, accidents howsoever caused, strike, labour dispute, lockout, work to rule or other industrial dispute, lack of energy supply, criminal action, terrorist action, civil unrest, embargoes, acts of God, acts of a public enemy, unavailability or impairment of computer or data processing facilities, the actions or omissions of third Persons (including, without limitation, Deriv/SERV, CLS Bank, Delivery Facilities, Approved Financial Institutions, bank or electronic transfer systems, Exchanges, Clearing Organisations, Governmental Authorities and Regulatory Authorities, but excluding the Clearing House in the case of a Force Majeure Event affecting the Clearing House and a Clearing Member, its Customers, Transferors and Transferees in the case of a Force Majeure Event affecting a Clearing Member); and, for CDS Clearing Members and the Clearing House in relation to CDS Clearing Members only, "Illegality" as defined in the 2002 ISDA Master Agreement published by ISDA; or alternatively and to the exclusion of the foregoing, in relation to delivery of a Commodity pursuant to any Energy Contract, any event that is an event of force majeure (or similar event, howsoever defined) for that Energy Contract under the Contract Terms or Market Rules.

The term "**FSA**" means the UK's Financial Services Authority or any successor entity.

The term "**FSA Rules**" means all rules, requirements, directions, guidance, examples, waivers and other similar materials published or otherwise made by the FSA from time to time.

The term "**FSMA**" means the UK's Financial Services and Markets Act 2000.

The term "**Future**" means an Energy Contract or FX Contract subject to Clearing by the Clearing House that is a 'future' or 'contract for differences etc.' under articles 84 or 85 of the FSMA (Regulated Activities) Order 2001 or any economically similar Contract (which may be labelled as a 'spot', 'forward' or 'swap' contract or treated as such under any Applicable Law) that is not an investment.

The term "**FX**" means foreign exchange.

The term "**FX Assessment Amount**" means the total amount of all FX Assessment Contributions payable by FX Clearing Members pursuant to Rule 1107 in respect of an Event of Default.

The term "**FX Assessment Contribution**" has the meaning set out in Rule 1107.

The term "FX Clearing Member" means a Clearing Member that is authorised by the Clearing House to become party to FX Contracts.

The term "FX Contract" means a Contract that is a foreign exchange contract that is subject to Clearing and that may be in the form of an FX Forward as specified in Circulars issued by the Clearing House from time to time. For the avoidance of doubt, an FX Swap shall be treated as two unrelated FX Forwards.

The term "FX Default Amount" has the meaning set out in Rule 1103(e)(iii).

The term "FX Delivery Margin" means the Permitted Cover required to be provided by FX Clearing Members related to the risk and size of an FX Clearing Member's obligations relating to settlement of an FX Contract.

The term "FX Forward" or "FX Forward Contract" or "Financially-Settled FX Contract" means a Futures contract which settles on the basis of the difference between the values on the Value Date of, the purchase of an agreed amount in one currency by one party ("Party A") to such contract and the sale by Party A of an agreed amount in another currency to the other party to such contract ("Party B") and which provides for cash settlement in a single currency on the relevant FX Value Date.

The term "FX Guaranty Fund" means the guaranty fund established and maintained pursuant to Part 11 relating to the Clearing of FX Contracts.

The term "FX Guaranty Fund Contribution" means a Guaranty Fund Contribution relating to the FX Guaranty Fund.

The term "FX Swap" means two FX Forwards.

The term "FX Transaction" means a foreign exchange transaction which pursuant to the Procedures is eligible for Clearing pursuant to these Rules and the Procedures.

The term "FX Value Date", in respect of a Financially-Settled FX Contract, means the date on which Party A or Party B is obliged to make payment to the other party in order to discharge its obligations under the contract, which date may be expressed as a value, termination or payout date.

The term "FX Variation Margin" means the Permitted Cover required to be provided to the Clearing House by Clearing Members in respect of FX Contracts pursuant to Rule 503(i) and the Procedures.

The term "GBP" means the lawful currency from time to time of the United Kingdom.

The term "Governmental Authority" means any Regulatory Authority and any national, federal, supranational, state, regional, provincial, local or other government, government department, ministry, governmental or administrative authority, regulator, agency, commission, secretary of state, minister, court, tribunal, judicial body or arbitral body or any other Person exercising judicial, executive, interpretative, enforcement, regulatory, investigative, fiscal, taxing or legislative powers or authority anywhere in the world with competent jurisdiction.

The term "**Guaranty Funds**" means the Energy Guaranty Fund, the CDS Guaranty Fund and the CDSEFX Guaranty Fund.

The term "**Guaranty Fund Contribution**" means Permitted Cover transferred by a Clearing Member to the Clearing House as a contribution to the Guaranty Fund pursuant to Part 11 that has not been applied pursuant to Part 11 and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Guaranty Fund Period**" (i) for the Energy Guaranty Fund, means a three-month period for which the total amount of Energy Guaranty Fund Contributions for the Energy Guaranty Fund is fixed (subject to any termination or suspension of any Energy Clearing Member's membership or status as an Energy Clearing Member, new Energy Clearing Members making Energy Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part 11); or (ii) for the CDS Guaranty Fund, means a period for which the total amount of CDS Guaranty Fund Contributions for the CDS Guaranty Fund is fixed pursuant to the Procedures (subject to any termination or suspension of any CDS Clearing Member's membership or status as a CDS Clearing Member, new CDS Clearing Members making CDS Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part 11); or (iii) for the FX Guaranty Fund, means a period for which the total amount of FX Guaranty Fund Contributions for the FX Guaranty Fund is fixed pursuant to the Procedures (subject to any termination or suspension of any FX Clearing Member's membership or status as an FX Clearing Member, new FX Clearing Members making FX Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part 11);

The term "**Guidance**" means guidance issued by the Clearing House pursuant to Rule 109(f).

The term "**HM Treasury**" means Her Majesty's Treasury in the UK and any successor thereto.

The term "**ICE Futures Europe**" means ICE Futures Europe (a company registered in England and Wales with registration number 01528617) and the recognised investment exchange (as defined in the FSMA) known as and operated by ICE Futures Europe.

The term "**ICE Futures Europe Block Contract**" means a Contract resulting from an ICE Futures Europe Block Transaction.

The term "**ICE Futures Europe Block Trade Facility**" means the block trade facility operated by ICE Futures Europe in accordance with the ICE Futures Europe Rules.

The term "**ICE Futures Europe Block Transaction**" means an EFS, EFP or ICE Futures Europe Block Trade Facility transaction reported through ICE Futures Europe in accordance with the ICE Futures Europe Rules.

The term "**ICE Futures Europe Contract**" means an ICE Futures Europe Block Contract or an ICE Futures Europe Matched Contract.

The term "**ICE Futures Europe Matched Contract**" means a Contract resulting from an ICE Futures Europe Matched Transaction.

The term "LCIA" means the London Court of International Arbitration or any successor thereto.

The term "LCIA Rules" means the arbitration rules of the London Court of International Arbitration.

The term "Long", in respect of an Option, refers to the positions of Persons entitled to exercise Options.

The term "Margin" means Original Margin, Original FX Margin, Variation Margin, FX Variation Margin, Initial Margin, Portfolio Risk Margin, Physical Settlement Margin, FX Delivery Margin, Mark-to-Market Margin and other margin, security or collateral provided to the Clearing House pursuant to the Rules or the Procedures and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Mark-to-Market Margin**" means the Permitted Cover required to be provided by Clearing Members to the Clearing House related to the market value of a Clearing Member's Open Contract Positions relating to CDS Contracts, as determined pursuant to Rule 503(f)(ii).

The term "**Mark-to-Market Price**" has the meaning given in Rule 503(g).

The term "**Market**" means ICE Futures Europe, ICE OTC, any Exchange used for the submission of FX Transactions for Clearing and any other market for which the Clearing House provides or may provide Clearing services (and for the purposes of Clearing Membership Agreements for CDS Clearing Members only, also includes the over-the-counter market for CDS).

The term "**Market Delivery Settlement Price**" in respect of a Set of Energy Contracts or an Energy Contract, means the delivery or cash settlement price determined pursuant to Rule 701.

The term "**Market Rules**" means the rules, regulations, procedures of, and agreements governing, a Market, including the ICE Futures Europe Rules and ICE OTC Participant Agreements, ICE OTC Broker Agreements and the procedures of each of ICE Futures Europe and ICE Inc.

The term "**Master Agreement**" has the meaning given to that term in Rule 1502(a)(i).

The term "**Membership Category**" means any of the three membership categories of Energy Clearing Member, CDS Clearing Member and FX Clearing Member.

The term "**Monetary Default**" means a Clearing Member failing to transfer, deposit with, or pay to, the Clearing House in full any Margin, Guaranty Fund Contribution, amount due under or in connection with any Contract or other amount due to the Clearing House or required by or pursuant to Market Rules.

The term "**Nominated Account**" means a Nominated Customer Account or a Nominated Proprietary Account.

The term "**Nominated Customer Account**" means an account (if any) of a Clearing Member at an Approved Financial Institution recognised by the Clearing House for administrative

convenience only and used by the Clearing Member for the business of its segregated Customers.

The term "**Nominated Proprietary Account**" means an account of a Clearing Member at an Approved Financial Institution that is not a Nominated Customer Account.

The term "**Non-DCM Customer**" means a Customer that is not a DCM Customer with respect to a Contract.

The term "**Non-DCM Customer Account**" means a Customer Account that is not a DCM Customer Account in relation to which the Clearing Member: (i) acts in its capacity as a clearing member in relation to transactions connected with the provision of services to Non-DCM Customers where segregation of related collateral is required in accordance with Applicable Laws; and (ii) enters into market contracts in the capacity of a clearing member in relation only to transactions connected with the provision of services to Non-DCM Customers.

The term "**OFT**" means the UK's Office of Fair Trading and any successor thereto.

The term "**Open Contract Position**", in respect of each Set of Contracts for a Clearing Member from time to time, comprises the Contract Position and, for Energy Contracts only, the Net Amount Position, where:

(a) *Contract Position* means:

- (i) in relation to a Proprietary Account for Energy Contracts that are Futures: where a Clearing Member is party to one or more Futures Contracts of a particular Set, the number that equals the netted sum of buy and sell obligations pursuant to those Contracts;
- (ii) in relation to a Proprietary Account for Energy Contracts that are Options: where a Clearing Member is party to one or more Options Contracts of a particular Set, the number that equals the netted sum of Long and Short obligations pursuant to those Contracts;
- (iii) in relation to a Customer Account for Energy Contracts that are Futures: where a Clearing Member is party to one or more Futures Contracts of a particular Set, the gross number of buy positions and the gross number of sell positions pursuant to those Contracts (subject to any netting pursuant to Rule 406);
- (iv) in relation to a Customer Account for Energy Contracts that are Options: where a Clearing Member is party to one or more Options Contracts of a particular Set, the gross number of Long positions and the gross number of Short positions pursuant to those Contracts (subject to any netting pursuant to Rule 406);
- (v) in relation to a Proprietary Account for CDS Contracts: where a Clearing Member is party to one or more CDS Contracts of a particular Set, the number that equals the aggregate of all Floating Rate Payer Calculation Amounts for (and as defined pursuant to) each CDS Contract of that Set where it acts as

Selling Clearing Member minus the aggregate of all Floating Rate Payer Calculation Amounts for each CDS Contract of that Set where it acts as Buying Clearing Member, provided that Matched CDS Contracts will be held and calculated on a gross basis; and

- (vi) in relation to a Customer Account for CDS Contracts: where a Clearing Member is party to one or more CDS Contracts of a particular Set, the gross number of all Floating Rate Payer Calculation Amounts for (and as defined pursuant to) each CDS Contract of that Set where it acts as Selling Clearing Member; and the gross number of all Floating Rate Payer Calculation Amounts for each CDS Contract of that Set where it acts as Buying Clearing Member, subject in either case to any netting pursuant to Rule 406, provided that Matched CDS Contracts will be held and calculated on a gross basis;
- (vii) in relation to a Proprietary Account for FX Contracts: where a Clearing Member is party to one or more FX Contracts of a particular Set, both the gross FX Contracts as Party A and the gross FX Contracts as Party B for a particular Set, without prejudice to any requirement for Margin to be called based on the position derived from the FX Contracts as Party A being netted against the FX Contracts as Party B (or vice versa) for a particular Set; and
- (viii) in relation to a Customer Account for FX Contracts: where a Clearing Member is party to one or more FX Contracts of a particular Set, both the gross FX Contracts as Party A and the gross FX Contracts as Party B for a particular Set, without prejudice to any requirement for Margin to be called based on the position derived from the FX Contracts as Party A being netted against the FX Contracts as Party B (or vice versa) for a particular Set to the extent permitted under these Rules and the Procedures for the Customer Account in question.

in any case as calculated by the Clearing House from time to time based on data received by the Clearing House in respect of Contracts entered into by the Clearing Member up to the close of business on the immediately preceding Business Day (or such other period determined by the Clearing House at its discretion); and

- (b) *Net Amount Position* for Energy Contracts, means the price at which the Open Contract Position is recorded on the Clearing House's books based on Settlement Prices for each Contract.

The term "**Opening Days**" means the days upon which the Clearing House is operational, which may vary for different Contracts or between deliveries and other business, as notified by the Clearing House from time to time.

The term "**Opening Hours**" means the hours during which the Clearing House is operational, which may vary for different Contracts or between deliveries and other business, as notified by the Clearing House from time to time.

The term "**Option**" means an Energy Contract or FX Contract subject to Clearing by the Clearing House that is an 'option' under article 83 of the FSMA (Regulated Activities) Order 2001 or any economically similar Contract that is not an investment.

The term "**Original Margin**" means the Permitted Cover required to be provided to the Clearing House as security for the obligations of a Clearing Member in respect of Energy Contracts pursuant to Part 5 and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Original FX Margin**" means the Permitted Cover required to be provided to the Clearing House as security for the obligations of a Clearing Member in respect of FX Contracts pursuant to Part 5 and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Permitted Cover**" means assets or cash determined by the Clearing House as permissible for Margin or Guaranty Fund Contributions, including cash in Eligible Currencies and includes, where the context so requires, any such assets transferred to the Clearing House and any proceeds of realisation of the same.

The term "**Person**" means any individual, partnership, firm, body corporate, association, trust, unincorporated organisation or other entity.

The term "**Physical Settlement Margin**" means the Permitted Cover required to be provided by Clearing Members related to the risk and size of a Clearing Member's obligations relating to physical settlement of a CDS Contract, as determined pursuant to Rule 503(f)(i).

The term "**Portfolio Risk Margin**" means the Permitted Cover required to be provided by Clearing Members to the Clearing House related to the size and risk of a Clearing Member's Open Contract Positions in relation to CDS Contracts, as determined pursuant to Rule 503(f)(i).

The term "**Position Holder**" has the meaning set out in Rule 407.

The term "**Position Limit**" of any Clearing Member means the limit(s) on Open Contract Positions established by the Clearing House pursuant to Rule 601.

The term "**President**" means the president of the Clearing House from time to time.

The term "**Procedures**" means the procedures of the Clearing House from time to time, as amended pursuant to Rule 109(e).

The term "**Proprietary Account**" means an account with the Clearing House, which is not a Customer Account, opened in the name of a Clearing Member in which Contracts made by the Clearing Member are recorded (whether directly or indirectly) and to which monies in respect of such Contracts are credited and debited, which may be divided for administrative convenience only into sub-accounts or may be designated for Energy Contracts only ~~or~~ for CDS Contracts only or for FX Contracts only.

The term "**Put**", in respect of an Energy Contract, means an Option pursuant to which the Person with a Long position has the right to sell a Future or Futures to the Person with a Short position at the Strike Price and at a specified time.

The term "**Reference Price**" in respect of Energy Contracts and a Set of Options or an Option, means the reference price determined by the Clearing House on the basis of data provided by the relevant Market or otherwise pursuant to Rule 802.

The term "**Regulatory Authority**" means any Governmental Authority which exercises a regulatory or supervisory function under the laws of any jurisdiction in relation to financial services, the financial markets, Exchanges or Clearing Organisations (including, without limitation, the FSA, any Person given powers under the FSMA, the Bank of England, HM Treasury, the OFT, the CFTC and the SEC).

The term "**Representative**" means any Person that carries out or is responsible for (or purports to carry out or be responsible for) any of the functions of another Person, including without limitation any director, partner, officer, executive, employee, Affiliate, Customer, contractor or agent of that other Person.

The term "**Rule Change**" means any amendment, alteration, restatement, addition, deletion or other change to the Rules made in accordance with Rule 109.

The term "**Rules**" means these rules, together with the Procedures, as interpreted in accordance with Guidance and Circulars.

The term "**SEC**" means the Securities and Exchange Commission of the United States of America, or any successor thereto.

The term "**Seller**" means, in relation to deliveries under Part 7, the Clearing Member or the Clearing House, whichever is obliged to make delivery of a Commodity (whether itself or through another Person).

The term "**Selling Clearing Member**" means: (a) the Clearing Member that was, before formation of a Contract for Clearing, party to the corresponding Transaction as seller (or, in relation to CDS Contracts, protection seller or, in relation to FX Contract, Party B); or (b) where a Clearing Member's Customer is party to the corresponding Transaction as seller ~~or~~, protection seller or Party B (as applicable), the Clearing Member that provides clearing services to that Customer in relation to the Transaction in question (or, for Energy Contracts, if more than one such Clearing Member exists, the Clearing Member that was selected by the Customer for the initial booking of that Transaction); or (c) in relation to Energy Contracts only, where one Clearing Member that would be a Selling Clearing Member in accordance with (a) or (b) above has allocated an Energy Transaction to another Clearing Member for clearing in accordance with Market Rules, the Clearing Member to whom such Energy Transaction is allocated.

The term "**Set**" means:

(a) for Futures Contracts: a set or class of Contracts that are identical as to their terms (including the Commodity to which such Contract relates and contract date; but excluding any amount paid or to be paid for entry into the Contract and any amount paid or to be paid in respect of settlement or delivery of a Contract);

(b) for Options Contracts: a set of Contracts that are identical as to their terms (including the Investment to which such Contracts relate, contract date and strike price; but excluding any amount paid or to be paid for entry into or writing of a Contract and any amount paid or to be paid in respect of settlement);

(c) for CDS Contracts that are based on an index (including Triggered Restructuring CDS Contract Portions and Component Transactions forming part thereof or, pursuant to the

Rules, resulting therefrom), a set of Contracts that are similar as to their terms (including, without limitation, identical as to their terms concerning the reference entities and obligations to which any payment or delivery obligation is linked, series number, fixed rate and scheduled termination date; but which may differ, without limitation, as to any Initial Payment, the 'Trade Date' and any provisions relating to tax or the provision of forms relating to tax); and

(d) for CDS Contracts that are based on a single reference entity, a set of Contracts that are similar as to their terms (including, without limitation, identical as to their terms concerning the reference entity and obligations to which any payment or delivery obligation is linked, fixed rate, scheduled termination date and, where terms are determined by reference to a "Physical Settlement Matrix", referring to the same version of such "Physical Settlement Matrix"; but which may differ, without limitation, as to any Initial Payment, the 'Trade Date' and any provisions relating to tax or the provision of forms relating to tax).

(e) for Financially-Settled FX Contracts: a set of Contracts that are identical as to their terms and economic characteristics (including the currency pair to which such FX Contracts relates and its FX Value Date; but excluding any amount paid or to be paid for entry into or writing of the Contract, any amount paid or to be paid in respect of settlement or delivery under the Contract and the position of the FX Clearing Member or Clearing House as Party A or Party B);

The term "**Settlement Finality Regulations**" means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.

The term "**Settlement Price**" means the settlement price for any Energy Contract as determined in accordance with the ICE Futures Europe Rules (for Contracts traded on ICE Futures Europe) or by the Clearing House in coordination with ICE Inc. (for Contracts traded on ICE OTC); except that if on any day an Energy Contract ceases to be traded, then the Clearing House may treat as the Settlement Price for such Energy Contract on such day a price determined by the Clearing House at its discretion (or by the relevant Market and accepted by the Clearing House at its discretion), as reflecting the fair market value of such Energy Contract as of the close of trading in such Energy Contract on such day.

The term "**Short**", in respect of an Option, refers to the positions of Persons against whom Put Options and Call Options may be exercised.

The term "**Strike Price**" in respect of an Option, means the price of the relevant Future upon exercise of the Option.

The term "**Summary Disciplinary Committee**" means a summary disciplinary committee established pursuant to Rule 1004(c).

The term "**Surplus Collateral**" means any Permitted Cover transferred to the Clearing House by a Clearing Member that is not required to satisfy the Clearing Member's current or most recently calculated requirements in respect of Margin and Guaranty Fund Contributions.

The term "**Swap**" means any Energy Contract or FX Contract subject to Clearing by the Clearing House that is an 'contract for difference' under article 85 of the FSMA (Regulated Activities) Order 2001 or any economically similar Contract that is not an investment.

The term "**Termination Date**" means the date on which a Clearing Member's membership of the Clearing House terminates.

The term "**Trade Date Clearing**" has the meaning given to it in the Procedures.

The term "**Transaction**" means an ICE Futures Europe Transaction, an ICE OTC Transaction or a Bilateral CDS Transaction or an FX Transaction.

The term "**Transaction Rights or Obligations**" means any rights, liabilities or obligations of a Clearing Member relating to, or arising out of or in connection with any Transaction, whether pursuant to contract, tort, equity, restitution or otherwise, pursuant to the laws of any jurisdiction, which fall or fell due for performance to any Person other than a Customer of the Clearing Member in relation to the Transaction in question.

The term "**Transferee**" means a Person nominated by a Buyer to whom a transfer or delivery is to be made under an Energy Contract and includes reference to the Buyer where transfer or delivery is to be made to the Buyer.

The term "**Transferor**" means a Person nominated by a Seller by whom a transfer or delivery is to be made under an Energy Contract and includes reference to the Seller where transfer or delivery is to be made by the Seller.

The term "**Tribunal**" means an arbitral tribunal established under Rule 117.

The term "**USD**" means the lawful currency from time to time of the United States of America.

The term "**Variation Margin**" means the cash required to be provided to the Clearing House by Clearing Members in respect of Energy Contracts pursuant to Rule 503(e) and the Procedures.

The term "**Weekly Clearing**" has the meaning given to it in the Procedures.

The term "**Withdrawal Date**" means, if at any time the Clearing House decides to terminate its services, either generally or in relation to a significant part of its business or certain categories of Contract, the date on which that termination will take effect.

Rule 102 *Interpretation*

- (a) Any reference to a statute, statutory provision or rule shall include any notice, order, guidance, example, regulation or subordinate legislation made from time to time under that statute, statutory provision or rule which is in force from time to time. Any reference to a statute or statutory provision shall include such statute or provision as from time to time modified, re-enacted or consolidated from time to time and (so far as liability thereunder may exist or can arise) shall include also any past statute or statutory provision (as from time to time modified, re-enacted or consolidated) which was applicable at the time of any relevant action or omission.
- (b) References to any rules or any agreement are references to such rules or agreement as amended or restated from time to time, provided that such amendments or restatements are made in accordance with these Rules.

- (c) The Interpretation Act 1978 shall apply to these Rules in the same way as it applies to an enactment.
- (d) When a reference is made in these Rules to a rule, part, paragraph or procedure, such reference is to a Rule, Part, paragraph, Procedure of, or made under these Rules, unless otherwise indicated.
- (e) The headings in these Rules are for reference purposes only and do not affect in any way the meaning or interpretation of these Rules.
- (f) To the extent there is any conflict between any of the provisions of these Rules, a Clearing Membership Agreement, the Master Agreement, the Procedures (including all exhibits, attachments and appendices thereto), any Guidance or Circular or Market Rules or between any of the foregoing, the provision of the first document specified in the paragraphs below shall prevail, control, govern and be binding upon the parties:
 - (i) these Rules (excluding the Procedures, Contract Terms and any other document incorporated by reference) (except Rules 301(h), (i), (j) or (k) only in the event of any conflict between any such provision on the one hand and any provision of the Contract Terms of a CDS Contract relating to tax on the other hand, in which case the relevant provision of the Contract Terms of the CDS Contract shall prevail; and except as provided in Rule 1518);
 - (ii) the Clearing Membership Agreement;
 - (iii) in the case of CDS Contracts only, the CDS Procedures;
 - (iv) in the case of CDS Contracts only, the Master Agreement;
 - (v) in the case of Energy Contracts traded on ICE Futures Europe only, in relation to those aspects of the ICE Futures Europe Rules that include Contract Terms only, the Market Rules;
 - (vi) in the case of Energy Contracts only, the Contract Terms other than those set out in these Rules or Market Rules (except as set out in Rule 102(f)(i)) (excluding the Rules and any other document incorporated by reference);
 - (vii) ~~in the case of Energy Contracts only, the Procedures (excluding any Contract Terms set out in the Procedures);~~
 - (viii) Market Rules other than those referred to in (v) above (excluding any document described in Rule 102(f)(i) to (vii) incorporated by reference);
 - (ix) any Guidance; and
 - (x) any Circular.
- (g) [Not used.]
- (h) All references to timings or times of day are to London (UK) times, unless indicated otherwise. Business hours shall occur only on Business Days and shall be construed accordingly.

Rule 103 *Delay in performance by the Clearing House*

Subject to the provisions of the Contract Terms relating to deliveries, where an obligation of the Clearing House must be performed immediately, promptly or by or prior to a specified time or date but is not so performed, the Clearing House shall not be in breach of these Rules if, having used all reasonable endeavours to perform such obligation by such specified time or date, it performs the relevant obligation promptly after such specified time or date.

Rule 104 *Invoicing Back and Specification of Terms*

- (a) The Clearing House shall have the right in consultation with the relevant Market (if any), to Invoice Back a Contract with a Clearing Member, including a Contract that is subject to delivery or tender, upon the occurrence of a Force Majeure Event or a Financial Emergency, provided that the Invoicing Back is, subject to Rule 109(c), approved in advance by an affirmative vote of the Board at a quorate meeting, at which meeting the facts giving rise to the Force Majeure Event or the Financial Emergency, as the case may be, will be considered and the meeting shall decide whether it would be appropriate to use this Invoicing Back power, and provided further that the use of this power will be undertaken subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (b) The Clearing House shall have the right (in the case of Energy Contracts, in consultation with the relevant Market), to specify or over-ride the price or other terms of any Energy Contract ~~or, FX Contract~~, Energy Transaction or FX Transaction, subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (c) Provided that any power exercised under this Rule 104 is exercised in accordance with its terms, any Invoicing Back, specification or over-riding by the Clearing House shall be final and binding for the purposes of these Rules and not be subject to challenge by any Person under these Rules or otherwise, except in the case of manifest error, negligence or fraud.
- (d) Where the Clearing House deems it necessary to exercise its powers under paragraph (a) or (b) above, it will do so in good faith and in accordance with Rule 102(p).
- (e) The Clearing House will not exercise its powers under paragraph (a) or (b) to avoid or amend the terms of any Contract to which a Clearing Member is party unless there is an objective justification for it doing so and such an approach is applied objectively. The price at which any Invoicing Back is executed shall be determined in a commercially reasonable manner.

Rule 105 *Termination*

- (a) If at any time the Clearing House decides to cease acting as a clearing house, either generally, in relation to a particular Exchange or in relation to a class of Contracts, it shall give all Clearing Members advanced notice of the proposed Withdrawal Date by Circular. In the event of a complete cessation of services or of services in relation to a particular Exchange or any class of Contracts, at least four months' notice shall be necessary. In any other event for which there is a Withdrawal Date, at least one

or the Clearing Member must take delivery of the Commodity or Investment, whichever is the earlier;

- (xiv) as a result of any action taken by it pursuant to Market Rules on the basis that Market Rules are to any extent invalid or *ultra vires* or that a determination or request made by the Market or any agreement made by the Market, is *ultra vires* or incompatible with Market Rules;
- (xv) any express or implied representations or warranties in relation to the Clearing House's systems, including, but not limited to, representations or warranties of good title, merchantability and fitness for purpose or for a particular use;
- (xvi) any statement, representation, assurance or warranty of the Clearing House or any other Person other than as expressly set out in the Rules, Contract Terms or Clearing Membership Agreement; or
- (xvii) any action, suit or proceeding brought against the Clearing House over one year after the time that a cause of action, suit or proceeding has accrued,

provided that neither this Rule 111(c) nor any other provision of these Rules shall affect the application of section 291 of the FSMA nor shall exclude or restrict the liability of the Clearing House or any other Person for:

- (xviii) fraud, bad faith or wilful misconduct;
 - (xix) personal injury or death resulting from negligence, recklessness, or an intentional act or omission;
 - (xx) obligations under Contracts (except that, other than as provided in Part 7, the terms of CDS Contracts, Part 15, ~~the terms of FX Contracts, Part 17,~~ and the Procedures, the Clearing House shall have no obligation physically to make or accept delivery of any Commodity or Investment and shall have no liability arising out of the failure or lateness of another Clearing Member (or its Transferor or Transferee) physically to make or accept any such delivery or make any such payment); or
 - (xxi) any liability which in accordance with Applicable Laws cannot be excluded, to the extent such liability cannot lawfully be excluded.
- (d) Any possible action, suit or proceeding against the Clearing House must be notified to the Clearing House as soon as reasonably practicable, including all relevant details then known and supporting documentation.
- (e) Due to ICE OTC not being a 'designated contract market' regulated under Applicable Laws in the United States of America, there may be result in additional risks, losses or liabilities for Clearing Members that are authorised to clear ICE OTC Contracts. Save as described in Rule 111(c)(xviii)-(xxi), the Clearing House shall not be liable to any Person as a result of any losses, damages, injuries, delays, costs or expenses arising out of or in connection with the lack of regulatory oversight or regulatory status of ICE OTC.

- (i) if sent by post, on the third Business Day (or tenth Business Day in the case of airmail) after the day on which it was deposited in the post, full postage prepaid, in a correctly addressed envelope; or
 - (ii) if delivered in person or by courier, at the time of delivery or, if not delivered during business hours on a Business Day, on the following Business Day.
- (d) Unless otherwise specified in the Rules or Procedures, any notice by fax or electronic communication shall not be effective until hard copy confirmation is served pursuant to Rule 113(c).
- (e) Each ~~CDS~~ Clearing Member that is not incorporated or registered in England and Wales shall appoint and maintain an agent in England and Wales to act as its agent to accept service of process issued out of the courts of England and Wales in relation to any arbitration commenced pursuant to Rule 117 or the Clearing Membership Agreement and shall deliver to the Clearing House an agreement substantially in the form specified by the Clearing House relating to such appointment countersigned by such agent. No ~~CDS~~ Clearing Member shall give any notice of revocation to, or otherwise terminate the appointment of, any such agent unless prior to such termination it has validly appointed a replacement agent in England and Wales reasonably acceptable to the Clearing House to accept service of process issued out of the courts of England and Wales in relation to any arbitration commenced pursuant to Rule 117 or the Clearing Membership Agreement and has delivered to the Clearing House a copy of that agent's acceptance of that appointment substantially in the form specified by the Clearing House countersigned by such agent. If for any reason any agent appointed under this Rule 113(e) ceases to be such an agent, the ~~CDS~~ Clearing Member shall forthwith appoint a replacement agent in England and Wales and deliver to the Clearing House a copy of the new agent's acceptance of that appointment substantially in the form specified by the Clearing House countersigned by such agent within 10 Business Days of such appointment. Nothing in these Rules, the Procedures, the Clearing Membership Agreement or any Contract shall affect the right of the Clearing House to serve process in any other manner permitted by law.

Rule 114 *Action by the Clearing House*

- (a) Except as otherwise specifically set out herein, any action permitted or required to be taken by the Clearing House may be taken by the Board, the Chairman, the President, any other Board member or any other officer or committee to whom or which authority has been delegated by the Clearing House, the Board, the Chairman, the President or any committee.
- (b) Where there is a provision to the effect that an action may be taken or power exercised by the Clearing House, any action taken or power exercised by the Clearing House shall be without prejudice to the right of the Clearing House to exercise such powers and take such other steps (or not as the case may be) as it may think fit upon that or any other occasion.

Rule 115 *Relations with Governmental Authorities and other Persons*

- (a) With a view to maintaining recognition as a clearing house under the FSMA, the Clearing House may:

subject to customer due diligence measures under the Money Laundering Regulations 2007 to the Clearing House's satisfaction.

- (b) The Clearing House may at its discretion attach further objective conditions to any application for Clearing Member status prior to such status being granted. The Clearing House may grant approval to an applicant conditional upon satisfying certain requirements, provided that the applicant has expressed its intention to meet such requirements and provided evidence of its ability to do so.
- (c) Applicants for membership must provide information or documentation to the Clearing House evidencing compliance (or lack thereof) with each of the criteria set out in or required pursuant to Rule 201(a), and, in addition, for CDS Clearing Member applicants only, Rule 201(i), and, in addition, for FX Clearing Member applicants only, Rule 201(j). Failure by an applicant to supply such information or documentation may result in an application being rejected.
- (d) All information supplied to the Clearing House in respect of an application for membership shall be deemed to have been provided by the Clearing Member to the Clearing House on the day on which that Clearing Member becomes a Clearing Member, save to the extent that such information has been amended or revoked at least two Business Days prior to membership being granted.
- (e) If the Clearing House determines that an application for membership should be denied, the applicant will be given notice of such denial. In such an event, the applicant may request an opportunity to be heard by the Clearing House's Board (or an appropriately constituted sub-committee of the Board) in relation to the matter and to present evidence as to why its application should not be denied or may raise a complaint which the Clearing House will deal with in the same way as if Part 10 applied to such complaint (notwithstanding that the Rules do not apply to the complaint).
- (f) Membership of the Clearing House does not entitle any Clearing Member to any shareholding or other similar interest in the Clearing House or any of the Clearing House's Controllers or Affiliates. Nothing in these Rules is intended to, or shall be deemed to, establish any partnership or joint venture between any Clearing Members or between the Clearing House and any other person. Except for any provision relating to Disclosed Principal Members or Representatives that are agents, nothing in these Rules constitutes any Clearing Member or the Clearing House as the agent or principal of any other Person. Nothing in these Rules authorises any Person to make or enter into any commitments for or on behalf of any other Person (save in the case of a Clearing Member acting on behalf of and being liable for a Customer or as otherwise expressly provided herein).
- (g) Clearing Members shall be deemed to represent and warrant, upon their first date of membership and on each subsequent date that they are a Clearing Member, that they meet all of the membership criteria ~~set out in or required pursuant to~~ Rule 201(a) (and, if they are a CDS Clearing Member, Rule 201(i) and, if they are an FX Clearing Member, Rule 201(j)) and are in compliance with all of their obligations under these Rules.

- (h) In order to attain and maintain membership as a Disclosed Principal Member, a Person must, at a minimum, as from the date on which it is proposed that it becomes a Disclosed Principal Member, meet all the requirements for membership as a Clearing Member. A Disclosed Principal Member shall be subject to and bound by all these Rules in every way as if it were a Clearing Member, subject to such modifications as are set out herein and acting at all times as disclosed principal for the Clearing Member that has appointed it.
- (i) In order to attain and maintain membership as a CDS Clearing Member, a Person must, at a minimum, as from the date on which it is proposed that it becomes a CDS Clearing Member, meet such additional requirements applicable to CDS Clearing Members as are specified in the Procedures.
- (j) In order to attain and maintain membership as an FX Clearing Member, a Person must, at a minimum, as from the date on which it is proposed that it becomes an FX Clearing Member, meet such additional requirements applicable to FX Clearing Members as are specified in the Procedures.

Rule 202 *Obligations of Clearing Members*

- (a) In connection with these Rules, all and any Contracts, its membership of the Clearing House and its business and activities as a Clearing Member, each Clearing Member shall at all times:
 - (i) comply with these Rules and any agreement with the Clearing House;
 - (ii) comply with all Applicable Laws relating to its status and performance as a Clearing Member;
 - (iii) act in good faith in its dealings with the Clearing House;
 - (iv) continually satisfy the criteria for membership set out in or required pursuant to Rule 201(a) and, in addition, if it is a CDS Clearing Member, Rule 201(i), and, in addition, if it is an FX Clearing Member, Rule 201(j);
 - (v) respond promptly to any direction by the Clearing House to provide information or documentation;
 - (vi) maintain and, where applicable, procure that its Controller maintains, at least the amount of Capital required pursuant to Rule 206;
 - (vii) pay all fees and other charges when due in accordance with Part 3;
 - (viii) provide Margin and make Margin payments to the Clearing House in accordance with Part 3 and Part 5;
 - (ix) make all such payments to such Guaranty Funds as are required pursuant to Part 11;
 - (x) respond promptly to all enquiries or requests for information made by the Clearing House;

- (xi) maintain accounts at an Approved Financial Institution for the deposit of funds in Eligible Currencies and the deposit of securities required to be transferred to and from the Clearing Member pursuant to these Rules (whether by way of Margin, Guaranty Fund Contributions, fees, amounts due under Contracts or otherwise) and have arrangements with such Approved Financial Institutions satisfactory to the Clearing House for electronic transfer of funds and securities into and out of such accounts (separately for Customer Account and Proprietary Account, if the Clearing Member has a Customer Account, separately for Energy Contracts, CDS Contracts and EnergyFX Contracts, if applicable, and separately for Non-DCM Customer Accounts and DCM Customer Accounts, if applicable) on the order of the Clearing House and without the need to seek the consent of such Clearing Member or any of its Customers;
- (xii) [*Not used.*];
- (xiii) if the Clearing House at its discretion so directs, allow formal audits or system tests of its operations related to its business with the Clearing House during reasonable business hours and on reasonable notice no more than twice annually, at the expense of the Clearing Member;
- (xiv) have adequate systems and controls in place in order to ensure that:
 - (A) its internal affairs are organised and controlled in a responsible and effective manner;
 - (B) it has adequate risk management systems that are applied appropriately;
 - (C) its internal record-keeping is adequate;
 - (D) all of its Representatives are fit and proper, suitable, adequately trained and properly supervised;
 - (E) all clearing business conducted by it, including in relation to individual Contracts, complies with the Clearing Member's obligations under the Rules and Applicable Laws;
 - (F) it only enters into Contracts or accesses the Clearing House (through actions of its Representatives or otherwise) in or from jurisdictions on a list of acceptable jurisdictions published by the Clearing House from time to time and in accordance with all conditions and requirements as are specified by the Clearing House from time to time for entry into Contracts or access in or from that jurisdiction;
 - (G) it is able continuously to monitor communication facilities for receipt of communications from the Clearing House; and
 - (H) it is able promptly to review Circulars and other communications delivered or made available to the Clearing Member or its Representatives by the Clearing House;

- (x) use or reveal any information confidential to the Clearing House or any of its Representatives when under a legal or contractual obligation to the Clearing House or any Applicable Law not to do so;
- (xi) use any information technology or any online services provided to it or made available to it pursuant to its membership of the Clearing House other than for the purposes of conducting its business and activities as a Clearing Member in accordance with these Rules;
- (xii) engage in any other event or practice which has developed or is developing on the Clearing House and is reasonably considered by the Clearing House to be capable of impairing the orderly conduct of business of the Clearing House or affecting the timely delivery or settlement of Contracts;
- (xiii) represent or hold out to any Person that membership of the Clearing House brings with it any stamp of approval, special status, hallmark, regulatory supervision or approval or confers any rights or protections to Customers or any other Person in relation to the Clearing Member's business, policies, financial standing or otherwise (although Clearing Members may inform their Customers, potential Customers and other Persons that they are a member of the Clearing House and details of their privileges);
- (xiv) participate in, facilitate, procure, counsel, incite, encourage, aid or abet any conduct by a third party which would be a violation or attempted violation of these Rules regardless of whether that third party is subject to these Rules;
- (xv) take any action or make any omission or knowingly or recklessly permit the use of its services, facilities or membership or clearing privileges by any Person in a manner which in the reasonable opinion of the Clearing House is liable to:
 - (A) bring the Clearing House or any of its Clearing Members into disrepute;
 - (B) impair the dignity or degrade the good name of the Clearing House;
 - (C) create or maintain or exacerbate actual or attempted breaches, infringements, manipulations or violations of the Rules (or arrangements, provisions or directions made or given thereunder) or market practice; or
 - (D) otherwise be substantially detrimental to the interests or welfare of the Clearing House;
- (xvi) engage in conduct that would render it unable to satisfy the membership criteria in Rule 201(a), Rule 201(i) or Rule 201(j) (in the case of ~~the Rule 201(i)~~, only if it is a CDS Clearing Member, and in the case of Rule 201(j), only if it is an FX Clearing Member);
- (xvii) knowingly, negligently, recklessly or carelessly allow any Representative to engage in any conduct that might itself breach these Rules or render it unable

to satisfy the membership criteria in Rule 201(a), Rule 201(i) or Rule 201(ij) (in the case of the Rule 201(i), only if it is a CDS Clearing Member and in the case of Rule 201(j), only if it is an FX Clearing Member);

- (xviii) assign any of its rights or transfer by novation any of its rights and obligations under these Rules to a third party (or purport to do so) unless the Clearing House provides its prior written consent (which consent shall not unreasonably be withheld or delayed); or
- (xix) breach any Contract Terms.

Rule 204 *Notifications by Clearing Members*

- (a) Each Clearing Member shall notify the Clearing House in writing without delay providing full particulars known to it:
 - (i) in relation to any change of Control, as soon as it becomes aware of that change or proposed change of Control and it is not prevented from disclosing the change of Control by Applicable Laws;
 - (ii) if it breaches any applicable Position Limit that has been notified to it;
 - (iii) if it ceases to have sufficient Capital;
 - (iv) if its Capital for any reason is reduced by more than 10% from that shown on the latest financial statement filed by it with the Clearing House;
 - (v) prior to any payment, loan, distribution or redemption causing a reduction in Capital of the nature described in Rule 204(a)(iv), detailing the payment, loan, distribution or redemption involved and a description of the effect that the same will have on the Capital of the Clearing Member;
 - (vi) in the event that it fails to meet any obligation to transfer, deposit or pay any Margin when and as required by any Clearing Organisation of which it is a member (other than the Clearing House), excluding any matter subject to a dispute (where the Clearing Member is not in default) or resulting from manifest error;
 - (vii) in the event that it fails to comply with any applicable financial requirements of any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation or Delivery Facility;
 - (viii) of an Insolvency affecting it or any of its Controllers or Affiliates (and must provide a copy of such notice to the FSA and the Bank of England pursuant to Part 12);
 - (ix) of any Event of Default affecting it;
 - (x) of any financial or commercial difficulty such as would give rise to a risk of an Event of Default occurring;
 - (xi) [*Not used.*];

only. A Clearing Member that has been suspended shall, during the term of such suspension and thereafter, remain and continue to be:

- (i) subject to and bound by these Rules and any agreements between it and the Clearing House;
 - (ii) obliged to pay all fees, fines, assessments or other charges imposed by the Clearing House;
 - (iii) liable pursuant to these Rules for all other obligations arising under Contracts and all obligations incurred before, during or after such suspension including, but not limited to, obligations to transfer, deposit, maintain and pay Margin and make Guaranty Fund Contributions; and
 - (iv) able to undertake such activities of a Clearing Member as are expressly permitted by the Clearing House and required to undertake such activities of a Clearing Member as are required by the Clearing House, in each case subject to compliance with all reasonable instructions of the Clearing House in relation to those activities.
- (c) The Clearing House shall be entitled at its discretion to revoke the suspension of any suspended Clearing Member.
- (d) The Clearing House may publish details of any suspension or a copy of any suspension notice in or together with a Circular, at its discretion except to the extent that a notice is required by Rule 208(e).
- (e) The Clearing House will issue a Circular promptly following any suspension of a CDS Clearing Member that is ~~not~~neither an Energy Clearing Member nor an FX Clearing Member or the suspension of any Clearing Member's ability to clear CDS Contracts, specifying the name of the CDS Clearing Member affected.
- (f) The Clearing House will issue a Circular promptly following any suspension of an FX Clearing Member that is neither an Energy Clearing Member nor a CDS Clearing Member or the suspension of any Clearing Member's ability to clear FX Contracts, specifying the name of the FX Clearing Member affected.

Rule 209 *Termination of Clearing Membership*

- (a) The Clearing House shall be entitled to terminate the membership of any Clearing Member immediately upon notice to the Clearing Member:
- (i) following the occurrence of any Event of Default affecting that Clearing Member;
 - (ii) as a result of disciplinary proceedings brought against that Clearing Member pursuant to Part 10;
 - (iii) upon receipt of notice of termination of the Clearing Member's Clearing Membership Agreement from that Clearing Member;

- (iv) following any material and unremedied breach by the Clearing Member of these Rules;
 - (v) upon such Clearing Member ceasing to meet, or being unable to satisfy the Clearing House that it is able to meet, any of the membership criteria set out in or required pursuant to Rule 201(a) or, if it is a CDS Clearing Member, Rule 201(i), or, if it is an FX Clearing Member, Rule 201(j); or
 - (vi) upon an Insolvency in relation to that Clearing Member or any of its Affiliates.
- (b) The Clearing House shall be entitled to terminate the membership of any Clearing Member upon no less than three months' prior written notice.
- (c) The Clearing Member shall be entitled to terminate its membership of the Clearing House: (i) upon no less than three months' prior written notice to the Clearing House; (ii) upon the Insolvency of the Clearing House; (iii) pursuant to Rule 1105(h); ~~or~~ (iv) pursuant to Rule 1106(h); or (v) pursuant to Rule 1107(h). The membership of a Clearing Member which is a CDS Clearing Member but ~~not~~ neither an Energy Clearing Member nor an FX Clearing Member shall terminate automatically upon the occurrence and continuance of an 'Event of Default' (as defined in the Master Agreement between the Clearing House and such CDS Clearing Member) in respect of the Clearing House. In the event of the Insolvency of the Clearing House or an 'Event of Default' as aforementioned in respect of the Clearing House, the rights and liabilities of each Clearing Member under CDS Contracts will be deemed discharged for the purposes of Rule 905 and a net sum or net sums payable by or to the Clearing Member to or from the Clearing House shall be determined as if each Clearing Member were a Defaulter, in accordance with Rule 905 *mutatis mutandis* and without need for the prior occurrence or declaration of an Event of Default in relation to such Clearing Member (provided that, for the avoidance of doubt: (A) Rules 1105 and 1106 shall only apply where necessary to meet a shortfall resulting from an Event of Default or Events of Default actually declared by the Clearing House pursuant to Rule 901(a) (rather than any Event of Default effectively deemed to occur pursuant to this provision); (B) Rules 901, 902, 903 and 904 shall apply only to Clearing Members that are actually declared subject to an Event of Default (rather than effectively deemed subject to an Event of Default pursuant to this provision); and (C) without prejudice to the generality of (B), Rule 903(a)(~~xiixiii~~) shall apply only in relation to Contracts the counterparties to which are Clearing Members that are actually declared subject to an Event of Default (and not in relation to Contracts the counterparties to which are Clearing Members that are effectively deemed to be subject to an Event of Default pursuant to this provision) and provided further that the determination of the net sum or net sums required to be determined made in these circumstances pursuant to Rule 905 in respect of a Clearing Member that is ~~both an Energy Clearing Member and a CDS Clearing Member~~ has multiple Membership Categories will be made separately in relation to the rights and liabilities of that Clearing Member ~~as Energy Clearing Member and as CDS Clearing Member~~ for each applicable Membership Category and Rule 905 shall be interpreted accordingly.
- (d) Upon any termination of a Clearing Member's membership, the relevant Clearing Member shall remain liable to transfer, deposit, maintain and pay all Margin, make

Guaranty Fund Contributions when due and make all other payments due pursuant to Contracts from time to time and shall be obliged to:

- (i) transfer, liquidate, make settlement in respect of and/or make delivery (as applicable) pursuant to all Contracts to which it is party in accordance with applicable Contract Terms; and
 - (ii) take such other actions as the Clearing House at its discretion deems appropriate or necessary.
- (e) Any Person who for any reason ceases to be a Clearing Member shall remain and continue to be:
- (i) subject to any arbitration, investigations, panels or proceedings, and provisions of these Rules relating thereto, which relate in whole or in part to any acts or omissions of that Person while it was a Clearing Member;
 - (ii) obliged in respect of all fees, fines, charges, payments pursuant to Contract Terms, Margin payments and other amounts due to the Clearing House as a result of Contracts and other obligations entered into or incurred prior to the termination of its status as Clearing Member;
 - (iii) subject to claims against its Guaranty Fund Contributions until the Clearing House returns such Guaranty Fund Contributions in accordance with Part 11;
 - (iv) obliged to pay any Assessment Contribution for which it is liable pursuant to Part 11.
- (f) ~~A Clearing Member which is both a CDS Clearing Member and an Energy Clearing Member~~ has multiple Membership Categories shall be entitled to terminate its status as ~~either a CDS Clearing Member or an Energy Clearing Member, CDS Clearing Member and/or an FX Clearing Member (whichever status or statuses are relevant to the termination in question)~~: (i) upon no less than three months' prior written notice to the Clearing House; (ii) upon the Insolvency of the Clearing House; (iii) pursuant to Rule 1105(i); ~~or~~ (iv) pursuant to Rule 1106(i); or (v) pursuant to Rule 1107(i). If a Clearing Member is ~~both a CDS Clearing Member and an Energy Clearing Member~~ has multiple Membership Categories, its status as a CDS Clearing Member shall terminate automatically upon the occurrence and continuance of an 'Event of Default' (as defined in the Master Agreement between the Clearing House and such CDS Clearing Member) in respect of the Clearing House. Rules 209(c) (third sentence only), 209(d) and 209(e) shall apply *mutatis mutandis* in relation to any termination described in this Rule 209(f), as regards Energy Contracts, CDS Contracts or ~~Energy~~ FX Contracts (whichever the Clearing Member proposes to cease to clear or ceases to clear, as applicable) and Clearing related thereto only.
- (g) The Clearing House may publish details of any termination or a copy of any termination notice in or together with a Circular, at its discretion except to the extent that a notice is required by Rule 209(h).
- (h) The Clearing House will issue a Circular promptly following any termination of membership of a CDS Clearing Member that is ~~not~~ neither an Energy Clearing

Member nor an FX Clearing Member or the termination of any Clearing Member's ability to clear CDS Contracts, specifying the name of the CDS Clearing Member affected.

- (i) The Clearing House will issue a Circular promptly following any termination of membership of an FX Clearing Member that is neither an Energy Clearing Member nor a CDS Clearing Member or the termination of any Clearing Member's ability to clear FX Contracts, specifying the name of the FX Clearing Member affected.

Part 3 Financial Requirements and Payments

Rule 301 *Fees, Margin, Contract and other payment obligations*

- (a) Clearing Members shall be liable to pay such fees and charges as are levied by the Clearing House in accordance with published rates from time to time. Unless otherwise provided and without limitation, fees shall be payable on each Contract cleared by the Clearing House and the Clearing House shall be entitled to levy fees in respect of Permitted Cover. The Clearing House may amend its fees and charges and the bases for its fees at any time and will notify Clearing Members of any such amendments by means of a Circular prior to the same taking effect.
- (b) Fees charged to Clearing Members by the Clearing House may include the fees of any one or more Markets. The Clearing House shall be entitled to collect fees due from Clearing Members on behalf of all Markets of which a Clearing Member is a member or participant.
- (c) Clearing Members shall be liable to make any payment to the Clearing House that is required pursuant to these Rules at the time and in the amount specified by the Rules or required in accordance with the Rules. In particular, Clearing Members shall be liable to make payment in respect of Margin and Guaranty Fund Contributions from time to time in accordance with Part 5, Part 6 and Part 11 of the Rules at the times and in the amounts that are required pursuant to the instructions of the Clearing House made pursuant to Rule 302.
- (d) Clearing Members shall be liable to pay all amounts due under the Contract Terms, upon entering into a Contract, as Margin and upon delivery or settlement, as further described in these Rules and the Contract Terms at the time and in such amounts as are required pursuant to the Contract Terms. Without prejudice to the generality of the foregoing:
 - (i) in relation to each Energy Contract that is a Future, the parties to such Contract shall be liable to make such payments upon settlement and delivery as are required pursuant to Part 7 and the Procedures; ~~and~~
 - (ii) in relation to each Energy Contract that is an Option, the parties to such Contract shall be liable to make such payments as are required pursuant to Part 8 and the Procedures;
 - (iii) in relation to each CDS Contract, the parties to such Contract shall be liable to make such payments as are required pursuant to Part 15 and the Procedures;
and
 - (iv) in relation to each FX Contract, the parties to such Contract shall be liable to make such payments as are required pursuant to Part 17 and the Procedures.
- (e) Each Clearing Member will procure that the Clearing House has at all times the right to instruct that Clearing Member's Approved Financial Institution to debit its Proprietary Accounts and Customer Accounts (if any) and any other account designated by that Clearing Member for the purposes of this Rule 301, for payment in respect of fees, charges, fines, penalties, Margin, Guaranty Fund Contributions,

shall arise unless the Clearing House has provided an acceptance notice to the Buying Clearing Member and Selling Clearing Member in accordance with the Procedures in relation to the CDS Contract; and

- (x) in the case of a CDS Contract arising under Rule 903(a)(~~xix~~xiii), at the time specified by the Clearing House for the entry into of the relevant CDS Contract occurs, provided that the Clearing House has given notice to the relevant CDS Clearing Member of the particulars of CDS Contracts involved and the price or Initial Payment at which such CDS Contracts will be recorded on the Clearing House's books and records-
 - (xi) in the case of an FX Contract (other than an FX Contract arising pursuant to Rule 401(a)(vii) or Rule 401(a)(xii)), the time specified pursuant to the Procedures occurs for the acceptance of the FX Contract, provided that no such FX Contract shall arise unless the Clearing House has provided an acceptance notice to the Buying Clearing Member and Selling Clearing Member in accordance with the Procedures in relation to the FX Contract;
 - (xii) in the case of an FX Contract arising under Rule 903(a)(xiv), the time specified by the Clearing House for the entry into of the relevant FX Contract occurs, provided that the Clearing House has given notice to the relevant FX Clearing Member of the particulars of FX Contracts involved and the price at which such FX Contracts will be recorded on the Clearing House's books and records.
- (b) For Energy Contracts only, a contract or contracts shall arise between the Clearing House and the Buyer and/or the Clearing House and the Seller at the moment that an alternative delivery is agreed in respect of a Contract where, pursuant to the Procedures, a new collateral contract arises as a result of the alternative delivery being agreed, at the time and subject to the conditions and effects on existing Contracts specified in the Procedures.
 - (c) Other than as specifically set out in the Procedures, the Clearing House shall be entitled to rely conclusively on the accuracy and authenticity of any and all information and data regarding any Transaction or Contract submitted to the Clearing House by or on behalf of a Market, Exchange, Deriv/SERV or other data entry facility for ~~CDS Contracts~~Transactions, any Clearing Member or Customer of a Clearing Member, whether or not a Clearing Member or Customer in fact authorised the submission of such information or the details so submitted.
 - (d) In the case of a new Contract that forms as a result of another Contract being Invoiced Back pursuant to Rule 401(a)(vi), the new Contract shall be on the same terms as the original Contract, except that the roles of Buying Clearing Member and the Clearing House or, as the case may be, the Selling Clearing Member and the Clearing House shall be reversed and the Clearing House shall be entitled, at its discretion, to determine the price or Initial Payment at which the Contract was bought or sold and any delivery or settlement price.
 - (e) In the case of a Contract that forms as a result of another Contract being subject to allocation pursuant to Rule 401(a)(viii), the new Contract shall be on the same terms as the original Contract, except that the identity of the Clearing Member shall be

different, in accordance with the allocation instructions received by the Clearing House. The Clearing Member that was party to the original Contract and the Clearing House shall each automatically and immediately be released and discharged from all their rights, liabilities and obligations in respect of the original Contract upon formation of the new Contract.

- (f) Upon request by the Clearing House, a Clearing Member shall promptly confirm or otherwise notify the details of any Contract or Transaction to the Clearing House in such form and manner as the Clearing House requests. Any such confirmation or notification shall not of itself affect the status or terms of any Contract.
 - (g) Clearing Members shall designate each Contract as related to one of its Proprietary Accounts or Customer Accounts (if any).
 - (h) Where a Clearing Member has appointed a Disclosed Principal Member, the Disclosed Principal Member shall be the Buying Clearing Member or the Selling Clearing Member (as applicable) instead of the relevant Clearing Member in respect of all Contracts arising under this Rule 401 to which that Clearing Member would, but for the requirements of this Rule 401(h), otherwise be party. All provisions of these Rules relating to Contracts shall be construed accordingly.
-
- (i) In order for a Contract to arise pursuant to:
 - (i) Rule 401(a)(i), (ii), (iii), (iv), (v), (vii) or (viii); or
 - (ii) Rule 401(a)(vi) in relation to an Energy Contract,the Clearing Member in question must be an Energy Clearing Member.
 - (j) In order for a Contract to arise pursuant to:
 - (i) Rule 401(a)(ix) or (x); or
 - (ii) Rule 401(a)(vi) in relation to a CDS Contract,the Clearing Member in question must be a CDS Clearing Member.
 - (k) In order for a Contract to arise pursuant to:
 - (i) Rule 401(a)(xi) or (xii); or
 - (ii) Rule 401(a)(vi) in relation to an FX Contract.the Clearing Member in question must be an FX Clearing Member.
 - (l) ~~(k)~~—On each occasion that the Clearing House gives notice in relation to a CDS Contract pursuant to Rule 401(a)(ix) or Rule 401(a)(x), each affected Clearing Member and/or the Clearing House, as applicable, must submit, in accordance with the Procedures, the terms of the actual or proposed CDS Contract to Deriv/SERV or another service specified by the Clearing House with identical terms as the original submission for clearing or the CDS Contract arising under Rule 401(a)(x), as

applicable, adjusted to take into account netting and aggregation of CDS Contracts pursuant to Rule 406.

(m) ~~(l)~~—Where an Energy Contract arises pursuant to Rule 401 as a result of trading, submission of trade data or other action by a Customer of a Clearing Member, an opposite corresponding contract shall arise between the Customer and that Clearing Member (and may be void or voided) and further corresponding contracts may arise between Customers in the manner specified by and in accordance with:

- (i) in the case of Energy Contracts arising as a result of ICE Futures Europe Transactions, the ICE Futures Europe Rules; or
- (ii) in the case of Energy Contracts arising as a result of ICE OTC Transactions, the Procedures.

(n) ~~(m)~~—When a Clearing Member enters into any Contract, it may do so in only one of the following three capacities:

- (i) as a clearing member in relation to a transaction or transactions connected with the provision of services to Non-DCM Customers where segregation of related collateral is required, in which case the Contract shall be recorded by the Clearing Member in the Non-DCM Customer Account;
- (ii) as a clearing member in relation to a transaction or transactions connected with the provision of services to DCM Customers, in which case the Contract shall be recorded by the Clearing Member in the DCM Customer Account; or
- (iii) as a clearing member in any other capacity (including where the Clearing Member does not provide any services to any Customer or where the Clearing Member provides services in relation to a transaction or transactions where there is no requirement for segregation of related collateral) in which case the Contract shall be recorded by the Clearing Member in the Proprietary Account.

(o) ~~(n)~~—For the avoidance of doubt, for purposes of section 187 of the Companies Act 1989, a Clearing Member with both a Non-DCM Customer Account and a DCM Customer Account enters into Contracts recorded in its Non-DCM Account in a different capacity to that in which it enters into Contracts recorded in its DCM Customer Account.

Rule 402 *Contracts only between Clearing Members and Clearing House*

- (a) Each Clearing Member that is party to a Contract shall act as principal and not as agent. In performing its obligations and exercising its rights under these Rules, the Clearing House shall treat the entitlement of Clearing Members to rights pursuant to Contracts to be a full legal and beneficial entitlement and not subject to any Encumbrance in favour of any Person other than the Clearing House (other than pursuant to the Contract Terms).
- (b) Upon the formation of a Contract in accordance with Rule 401, any Clearing Member that has any Transaction Rights or Obligations in relation to the original Transaction

Rule 404 *Contracts that are Voidable*

- (a) In relation only to Energy Contracts, the Clearing House shall have the discretion to avoid any Contract (which is not void *ab initio* pursuant to Rule 403) if the relevant Contract or Transaction (or related information or data received by the Clearing House, as applicable) whether in whole or in part:
- (i) conflicts or appears to conflict with information received by the Clearing House in relation to such Contract or Transaction from another source, including (without limitation) information received from a Market, Exchange, Deriv/SERV or any other data entry facility for CDS Contracts, any other Clearing Member or any Governmental Authority;
 - (ii) results or appears to result from a communications or information technology error or problem;
 - (iii) is or appears to be connected with fraud, illegality, insider dealing, market abuse, money laundering or any other breach of Applicable Laws;
 - (iv) is or appears to be a result of a Force Majeure Event;
 - (v) is one which any Governmental Authority or any Market requires or requests in writing that the Clearing House treat as void or voided;
 - (vi) is one which any Applicable Law provides is void or voided or which any Applicable Law requires the Clearing House to treat as void or voided;
 - (vii) is one in respect of which the Clearing House has requested additional Margin or Permitted Cover from the Clearing Member and no Margin or Permitted Cover is provided by the time required;
 - (viii) is otherwise made or received in such circumstances or in such a manner that acceptance of the Contract or Transaction would be inadvisable, in the opinion of the Clearing House, for the Clearing House's own protection, the protection of Clearing Members generally, Energy Clearing Members generally or the protection of a Market or marketplace in any class of Contracts.
- (b) If any CDS Contract or EX Contract:
- (i) is one which any Governmental Authority requires or requests in writing that the Clearing House treat as void or voided;
 - (ii) is one which any Applicable Law provides is void or voided, or requires the Clearing House to treat as void or voided;
 - (iii) is one which, whether in whole or in part, pursuant to any Applicable Law is voidable; or
 - (iv) is unenforceable by the Clearing House,

then the Clearing House shall act in accordance with Rule 404(c). A CDS Contract shall not be subject to Rule 404(b)(iii) or (iv) if a Clearing Member is subject to

fraud, illegality, insider dealing, market abuse, money laundering, breach of Applicable Laws or other grounds for the ~~CDS~~ Contract being void, voidable or unenforceable solely as a result of it having been party to a Bilateral CDS Transaction or an FX Transaction (as applicable) in circumstances in which a ~~CDS~~ Contract to which another Clearing Member is party is subject to Rule 404(b)(iii) or (iv).

(c) If any of the circumstances set out in Rule 404(b)(i) and (ii) arises, the Clearing House shall comply with any relevant request, requirement or provision, and, if Rule 404(b)(iii) or (iv) applies, it may at its discretion avoid the relevant ~~CDS~~ Contract. If the Clearing House exercises its discretion to avoid a ~~CDS~~ Contract or any ~~CDS~~ Contract is otherwise void or voided, the Clearing House may, at its discretion, take action in accordance with this Rule 404(c). Where it does take action under this Rule 404(c), it may take the steps set out in paragraph (i) below or, if that is not reasonably practicable, it may take the steps set out in paragraph (ii) below, in relation to the affected ~~CDS~~ Contract(s):

- (i) direct the Clearing Member who was counterparty to the void or voided ~~CDS~~ Contract to enter into a replacement ~~CDS~~ Contract of equal economic terms to the void or voided ~~CDS~~ Contract or sign documentation confirming the validity of an existing ~~CDS~~ Contract, in which case the Clearing Member shall forthwith execute or sign such documentation as is directed by the Clearing House, which documentation may contain any terms specified by the Clearing House, in order to establish a replacement ~~CDS~~ Contract as near as possible of equal terms to the ~~CDS~~ Contract that is void or voided or confirm the validity of an existing ~~CDS~~ Contract; or
- (ii) enter into such contracts for its own account as it considers necessary for the Clearing House to achieve a balanced book of ~~CDS~~ Contracts, in which case:
 - (A) the Clearing Member who was counterparty to the void or voided ~~CDS~~ Contract shall be liable to pay the Clearing House for all of the Clearing House's costs, expenses and losses incurred in establishing such contracts;
 - (B) the Clearing House shall be entitled to retain all Margin and Guaranty Fund Contributions of the Clearing Member that would otherwise be returned or returnable to the Clearing Member as a result of the ~~CDS~~ Contract being voided and apply the same as against any amount due to the Clearing House under Rule 404(c)(ii)(A); and
 - (C) the Clearing House shall be entitled to call additional Margin from the Clearing Member from the time at which the ~~CDS~~ Contract is void until the time that the Clearing House has achieved a balanced book and has been reimbursed in respect of all its costs, expenses and losses incurred in establishing such contracts,

provided that, for the avoidance of doubt, any amounts received by the Clearing House in the process of achieving a balanced book which are in excess of its costs, expenses and losses incurred in establishing such contracts will be repayable to the affected Clearing Member.

- (d) If the Clearing House directs a Clearing Member to enter into a replacement ~~CDS~~ Contract or sign documentation confirming the validity of an existing ~~CDS~~ Contract under Rule 404(c)(i), any failure by the Clearing Member to do so or to take the steps set out in Rule 404(e) at or before the time reasonably specified by the Clearing House shall constitute grounds for the Clearing House declaring an Event of Default in respect of the Clearing Member, regardless of any event or circumstance which might (but for this provision) constitute a Force Majeure Event. If a Clearing Member is restricted or prevented by Applicable Law from entering into or signing a valid replacement ~~CDS~~ Contract or signing documentation confirming the validity of an existing ~~CDS~~ Contract, such restriction or prevention (in conjunction with the failure of the Clearing Member to enter into a replacement ~~CDS~~ Contract or sign effective documentation confirming the validity of an existing ~~CDS~~ Contract where directed to do so by the Clearing House pursuant to Rule 404(c)(i) or to take the steps set out in Rule 404(e)) shall of itself constitute grounds for the Clearing House declaring an Event of Default in respect of the Clearing Member, regardless of any event or circumstance which might (but for this provision) constitute a Force Majeure Event.
- (e) If, in relation to an Energy Contract, any of the circumstances in Rule 404(a) arises or if, in the case of a CDS Contract or FX Contract only, any of the circumstances set out in Rule 404(b) arises and no replacement ~~CDS~~ Contract is established and the position is not otherwise dealt with pursuant to Rule 404(c), the Clearing House shall immediately notify the affected Clearing Members and any relevant Market. Upon such notification:
- (i) the Clearing House and the Clearing Member shall immediately be released from all rights, liabilities and obligations under any affected Contract;
 - (ii) the affected Contract shall become null and void;
 - (iii) all amounts paid pursuant to the Contract shall immediately be returned by the Clearing Member and the Clearing House to their respective contractual counterparties, in each case without interest;
 - (iv) in the case of an Energy Contract, any Transaction Rights or Obligations shall be deemed never to have been affected by Rule 402(b); and
 - (v) in the case of two CDS Contracts resulting from the same Bilateral CDS Transaction being voided in circumstances in which the Bilateral CDS Transaction itself is not void:
 - (A) each affected Clearing Member shall submit or, as the case may be, resubmit the terms of the Bilateral CDS Transaction to Deriv/SERV or another service specified by the Clearing House;
 - (B) each affected Clearing Member or the Clearing House, as the case may be, shall cancel any submission relating to the proposed CDS Contract made pursuant to Rule 401(~~k~~l);
 - (C) relevant Bilateral CDS Transactions shall be deemed never to have been terminated; and

- (D) any Transaction Rights or Obligations shall be deemed never to have been affected by Rule 402(b).
- (vi) in the case of two FX Contracts resulting from the same FX Transaction being voided in circumstances in which the FX Transaction itself is not void:
 - (A) the relevant FX Transaction shall be deemed never to have been terminated; and
 - (B) any Transaction Rights or Obligations shall be deemed never to have been affected by Rule 402(b).
- (f) Nothing in this Rule 404 of itself is intended to result in any Transaction or Transaction Rights or Obligations being void or voided as between the original parties thereto.
- (g) For the avoidance of doubt, Rules 404(b), (c) and (d) shall only apply to CDS Contracts and FX Contracts and shall not apply to Energy Contracts.

Rule 405 *Representations and Warranties on Contract Formation*

- (a) In relation to each Contract, the Clearing House will, and will be entitled to, rely on representations and warranties, deemed automatically to arise pursuant to these Rules from each Clearing Member proposing to become party to any Contract, that the Clearing Member is:
 - (i) acting as principal and not as agent; and
 - (ii) in full compliance with the Rules.
- (b) In relation to each Contract (other than a Contract arising pursuant to Rule 401(a)(v), Rule 401(a)(vi), Rule 401(a)(x), Rule 401(a)(xii) or Rule 401(b)), the Clearing House will, and will be entitled to, rely on representations and warranties, deemed automatically to arise pursuant to these Rules from each Clearing Member proposing to become party to any Contract, that:
 - (i) the data submitted by the Clearing Member or its Customer to the Exchange (if applicable) or the Clearing House has been authorised by the Clearing Member and is complete and correct in all respects; and
 - (ii) Market Rules (if applicable) and all Applicable Laws have been complied with by the Clearing Member and any relevant Customer in respect of the Transaction.
- (c) In relation to each Contract that arises pursuant to Rule 401(a)(iii), Rule 401(a)(iv), Rule 401(a)(viii), Rule 401(a)(ix) and Rule 401(a)(~~ix~~xii), the Clearing House will, and will be entitled to, rely on representations and warranties deemed automatically to arise pursuant to these Rules from each Clearing Member proposing to become party to any Contract, that:
 - (i) all and any previously subsisting contracts, rights, obligations or liabilities in connection with the subject matter of the Transaction or proposed Contract are

on equal terms to that of the relevant Contract Terms (save as to the parties) and, in the case of rights, free from all Encumbrances (excluding liabilities and obligations arising pursuant to the Contract Terms);

- (ii) any Person other than the Clearing Member to whom any contracts, rights, obligations or liabilities referred to in Rule 405(c)(i) pertain has agreed with the Clearing Member, or such other Person as is relevant, to be released from all of its rights, obligations and liabilities as a result of Contracts arising pursuant to Rule 401(a) (save for any contracts, rights, obligations or liabilities as between the Clearing Member and its Customers and any Customer and its customers and so on in relation to the subject matter of the Contract); and
 - (iii) any contracts giving rise to the Transaction were, immediately prior to the formation of a Contract pursuant to Rule 401(a), legally valid, binding and enforceable under Applicable Laws.
- (d) Clearing Members will become party to, and liable under, Contracts each and every time a Transaction that gives rise to a Contract arises as a result of the action or omission of its Representatives, regardless of any circumstance in relation to such Transaction, including without limitation whether the person placing the Transaction was authorised to do so by the Clearing Member or its Representative or whether the Transaction caused a Representative to exceed the Clearing House's credit or other parameters set for such Representative, the Clearing House's Position Limits or otherwise was in breach of the Rules or any of the Clearing Member's or Clearing House's policies, procedures or controls.

Rule 406 *Open Contract Positions*

- (a) At the end of each day or at such other frequency as the Clearing House determines at its discretion either generally or in respect of any Clearing Member, the Clearing House will calculate Open Contract Positions in its books and records. Settlement or revaluation of Open Contract Positions and Contracts will take place pursuant to the applicable Contract Terms and, for Energy Contracts, through the Clearing Processing System. The Clearing House shall have no obligation to notify any Clearing Member of Open Contract Positions or Contracts other than through the Clearing Processing System or otherwise in accordance with the Rules and Procedures.
- (b) If a Clearing Member so instructs the Clearing House in accordance with the Procedures, the Clearing House will net particular buy and sell positions (for a Set of Futures that are Energy Contracts) or Long and Short positions (for a Set of Options that are Energy Contracts) within the Clearing Member's Open Contract Position in respect of a Clearing Member's Customer Account.
- (c) Subject to its obligations under Rule 406(b), the Clearing House may at its discretion treat any Energy Contract pursuant to which a Clearing Member is the Buying Clearing Member and another Energy Contract of the same Set pursuant to which the same Clearing Member is the Selling Clearing Member simultaneously as being netted, set off and mutually closed out and terminated upon calculation of the Open Contract Position in respect of such Energy Contracts, subject to the Clearing Member having made all then due payments pursuant to the Contract Terms in respect

CDS Clearing Member and the Clearing House will together correct the records of Deriv/SERV accordingly; and

- (viii) where Rule 406(d)(ii) or Rule 406(d)(iii) applies to a CDS Sub-Account, Fixed Amounts for the CDS Contracts recorded in that CDS Sub-Account shall be calculated on the basis of the average Floating Rate Payer Calculation Amounts for the affected period.

(f) There shall be no regular contractual netting or aggregation of FX Contracts. FX Contracts will be recorded separately and on a gross basis in both the Clearing Member's Proprietary Account and Customer Account. Notwithstanding this Rule 406(f):

(i) following an Event of Default, Part 9 of the Rules shall prevail and apply in relation to all matters concerning aggregation, consolidation, set off, closing out and termination of Contracts;

(ii) Rule 406(f) does not affect the definition or calculation of any Margin or Guaranty Fund Contribution requirements applicable to an FX Clearing Member; and

(iii) if the Clearing House nets and offsets or combines and replaces any opposite FX Contracts (or parts thereof) of a Defaulter pursuant to Rule 902 or Rule 903, then the Clearing House shall be entitled to net and offset or combine and replace up to an equal amount of FX Contracts (or parts thereof) of other Clearing Members (which are not Defaulters) of the same Set as those FX Contracts of the Defaulter that were netted and offset or combined and replaced, and upon any such netting and offsetting or combination and replacement being notified by the Clearing House to a Clearing Member, the FX Contracts to which the netting and offsetting or combination and replacement applies shall automatically be terminated (and, in the case of a combination or partial offset, replaced with a new FX Contract) without need for any further action on the part of any Person, provided that:

(A) the Clearing House shall only net or offset two FX Contracts of a Clearing Member that is not a Defaulter, in whole or in part, where the two FX Contracts are in the same Set and the Clearing Member in question is Party A to one of the FX Contracts and Party B to the other FX Contract;

(B) the Clearing House shall only combine and replace two FX Contracts (or parts thereof) of a Clearing Member that is not a Defaulter;

(1) if the two FX Contracts being combined are FX Forward Contracts;

(2) if the Clearing Member is Party A under one of the FX Forward Contracts in respect of a particular currency and Party B under the other FX Forward Contract in respect of the same currency, and those two FX Forward Contracts have the same FX Value Date; and

(3) if the replacement FX Contract is also an FX Forward Contract, with the obligations and rights of the Clearing Member referring to the two currencies of the original FX Contracts (which were not the same), but with the same FX Value Date as the original FX Contracts and based on obligations with reference to the delivery and receipt of the two remaining currencies as stood under the original FX Contracts;

(C) the Clearing Members to which any netting, offsetting, combination or replacement applies shall be selected by the Clearing House based on an objective, automated selection process; and

(D) the price of any other FX Contract of a Clearing Member in the same Set as an FX Contract which is netted, offset, combined or replaced may be re-set and over-ridden by the Clearing House solely in order to ensure that the economic position of the Clearing Member in the relevant Set remains identical despite the occurrence of the netting, offsetting, combination or replacement.

(g) ~~(f)~~ All Intellectual Property in data relating to Transactions, Contracts and Open Contract Positions provided to the Clearing House under these Rules or generated by the Clearing House shall be the property of the Clearing House (except that, in relation to CDS Contracts or FX Contracts, this shall be subject to any provision to the contrary in any agreement in writing between the Clearing House and a CDS Clearing Member or FX Clearing Member, respectively). Such data may be provided by the Clearing House to any Market, Exchange, Deriv/SERV or any other data entry facility for CDS Contracts or any repository or data entry facility for FX Contracts and any member of the ICE Group and used by the Clearing House or such other Persons for any commercial or other purpose, subject in each case to the restrictions in Rule 106(a). Each Clearing Member's rights in such Intellectual Property shall be automatically assigned to the Clearing House by virtue of this provision as such rights arise. This Rule 406(f) is subject, in relation to CDS Clearing and FX Clearing, to any further restrictions in any agreement in writing between the Clearing House and a CDS Clearing Member or FX Clearing Member, as the case may be.

Rule 407 *Reporting of Open Contract Positions Carried by Other Clearing Members*

If a Clearing Member (for the purposes of this Rule 407 only, the "**Relevant Clearing Member**") has Customer or proprietary positions in respect of any Contract carried for it by another Clearing Member (for the purposes of this Rule 407 only, the "**Position Holder**"), the Relevant Clearing Member shall give written notice to the Clearing House of the name of the Position Holder and the extent of its position on the Business Day following the Business Day on which a position was carried by the Position Holder.

Rule 408 *Transfer of Contracts*

(a) A Clearing Member shall not assign, allocate or transfer, or create any Encumbrance whatsoever in relation to, any of its rights, liabilities or obligations under a Contract except:

- (i) that all rights and obligations of a Clearing Member pursuant to a Contract may be transferred from one Clearing Member to another Clearing Member with the agreement of each of the two Clearing Members involved and the consent of the Clearing House and relevant Market (if any), subject to such conditions as the Clearing House at its discretion stipulates;
 - (ii) as a result of an allocation resulting in a Clearing Member being the 'Buying Clearing Member' or 'Selling Clearing Member' as such terms are defined in Rule 101;
 - (iii) as a result of an allocation pursuant to Rule 401(a)(viii);
 - (iv) as a result of a CDS Contract arising pursuant to Rule 903(a)(~~xiii~~) and Rule 401(a)(x);
 - (v) as a result of an FX Contract arising pursuant to Rule 903(a)(xiv) and Rule 401(a)(xii); or
 - (vi) ~~(v)~~ as a result of a sale or transfer of Contracts pursuant to Rule 902(a)(i).
- (b) Any purported transfer of any rights, liabilities or obligations under a Contract other than in accordance with Rule 408(a) shall be null and void.

Rule 409 *Amendment of Contract Terms*

- (a) The terms of any Contract may only be amended, waived or varied with the prior written consent of the Clearing House.

Part 5 Margin

Rule 501 *Approved Financial Institutions*

- (a) The Clearing House will maintain a list of Approved Financial Institutions. Only Approved Financial Institutions shall be permitted by the Clearing House:
 - (i) to open and operate, on behalf of Clearing Members, accounts from which the Clearing House can draw amounts pursuant to a direct debit mandate, for the collection of amounts due to the Clearing House from time to time; and
 - (ii) to issue and confirm letters of credit for Clearing Members. Approved Financial Institutions may also act in such other capacity as the Clearing House may approve from time to time.
- (b) All cash transfers made by Clearing Members to or to the order of the Clearing House must be made from an account at an Approved Financial Institution, unless the Clearing House gives its prior written consent to another method being used.
- (c) Clearing Members are given notice that the Clearing House may suspend or terminate the status of an Approved Financial Institution or attach, amend or revoke conditions to the continued status of an Approved Financial Institution. The Clearing House may take such steps if an institution no longer meets all of the requirements of the Clearing House or if the Clearing House determines that it would be advisable for the Clearing House's own protection, the protection of Clearing Members or the protection of a Market to do so.

Rule 502 *Margin*

- (a) Each Clearing Member shall transfer Permitted Cover to the Clearing House in respect of Margin in such amounts, in such forms and at such times as are required pursuant to this Part 5 and otherwise as may be prescribed by the Clearing House from time to time.
- (b) At any time on which a requirement for Original Margin, Original FX Margin, Initial Margin or Margin under Rule 502(g) falls due and insufficient Permitted Cover is held, the Clearing Member must initially transfer cash in an Eligible Currency. Thereafter a Clearing Member may substitute such cash Margin with other Permitted Cover by delivery of the replacement Permitted Cover to the Clearing House. The amount of Original Margin or Margin under Rule 502(g) for any Business Day shall be calculated (and, if necessary, called) separately in respect of the relevant Proprietary Account, Non-DCM Customer Account (if any) and DCM Customer Account (if any) of a Clearing Member in accordance with the Procedures.
- (c) Variation Margin, FX Variation Margin and Mark-to Market Margin payments may be made by the Clearing House or a Clearing Member only in cash in the Eligible Currency in which the Contract in question is to be or can be settled (for Energy Contracts) or, which is the settlement currency (save where the Procedures require otherwise) (for CDS Contracts) pursuant to the Contract Terms or which is specified as the FX Variation Margin currency for the relevant Set (for FX Contracts) (save where the Procedures require otherwise).

in order to protect the interests of the Clearing House and Clearing Members, the Clearing House may set the Mark-to-Market Price for CDS Contracts of any Set at a price determined by the Clearing House at its discretion. When the Clearing House so uses its discretion so to set a Mark-to-Market Price, the reasons for doing so and the basis for the establishment of the Mark-to-Market Price in such circumstances shall be recorded by the Clearing House. To aid in the establishment of Mark-to-Market Prices, Clearing Members are required to submit end-of-day prices relating to Sets of CDS Contracts in accordance with the Procedures. In connection with the Clearing services provided by the Clearing House and as detailed in the Procedures, the submission of end-of-day prices relating to CDS Contracts may result in Bilateral CDS Transactions being entered into between CDS Clearing Members (and consequentially if such Bilateral CDS Transactions are submitted to the Clearing House for Clearing, CDS Contracts arising pursuant to Rule 401(a)(ix)).

- (h) For regular and intra-day Margin calls relating to FX Contracts, Margin shall be calculated with reference to a Clearing Member's FX Contracts in accordance with the Procedures.
- (i) The amount of FX Variation Margin for any Business Day shall be calculated (and, if necessary, called) separately in respect of the relevant Proprietary Account and Customer Account of a Clearing Member in accordance with the Procedures. Each such FX Variation Margin call shall be based on changes to the mark-to-market values for FX Contracts and exchange rates from the last time at which a call for FX Variation Margin was made in accordance with Part 17 of the Rules and the Procedures.
- (j) ~~(h)~~ The Clearing House shall return to a Clearing Member the amount of any excess Margin, provided that the Clearing House receives a request for such a release from such Clearing Member by such time as may be specified by the Clearing House on the day such release is to be made, in accordance with Rule 302.

Rule 504 *Rights relating to Margin and Representations of Clearing Members*

- (a) The rights and liabilities of the Clearing House and each Clearing Member in relation to Margin are set out in the Clearing Membership Agreement and these Rules.
- (b) Each Clearing Member will act as principal and not as agent in providing Margin to the Clearing House. The Clearing House will take no account of any right or interest which any Person other than the Clearing Member may have in any Margin furnished by such Clearing Member to the Clearing House.
- (c) Each Clearing Member will be deemed to represent and warrant to the Clearing House on each date on which such Clearing Member provides assets to the Clearing House to be held by way of Margin pursuant to these Rules, that:
 - (i) the Clearing Member is the sole legal and beneficial owner of all such assets (or such assets are provided with the legal and beneficial owner's unconditional consent for their use and application pursuant to these Rules);
 - (ii) no such assets are subject to any Encumbrance whatsoever; and

Part 7 Settlement and Delivery of Futures

Part 7 of the Rules does not apply to CDS Contracts or FX Contracts. References to Contracts in this section are to Energy Contracts. References to Customer Accounts and Proprietary Accounts in this section are references to such accounts as are designated for Energy Contracts.

Rule 701 *Determination of Market Delivery Settlement Price*

- (a) The Clearing House will specify the Market Delivery Settlement Price for any Future Set.
- (b) The Market Delivery Settlement Price will generally be determined on the basis of data provided by the Market on which the Contract in question is traded.
- (c) The Clearing House shall be entitled to determine the Market Delivery Settlement Price itself, at its discretion, if:
 - (i) a Market fails on any day to determine a Market Delivery Settlement Price;
 - (ii) a Market fails to provide the Clearing House with necessary data for determination of a Market Delivery Settlement Price;
 - (iii) there is an error in data provided by a Market; or
 - (iv) the Clearing House at its discretion otherwise considers it appropriate to do so.

Rule 702 *Cash Settlement*

- (a) A Futures Contract shall be settled in cash if:
 - (i) pursuant to the applicable Contract Terms it can be settled only in cash; or
 - (ii) pursuant to the applicable Contract Terms it may be settled in cash and the Clearing Member opts to settle the Contract(s) in cash.
- (b) Cash settlement for a Set of Futures Contracts shall occur separately, and separate payment obligations shall accrue, in respect of a Clearing Member's:
 - (i) Proprietary Account;
 - (ii) gross buy positions under its Non-DCM Customer Account (if applicable);
 - (iii) gross sell positions under its Non-DCM Customer Account (if applicable);
 - (iv) gross buy positions under its DCM Customer Account (if applicable); and
 - (v) gross sell positions under its DCM Customer Account (if applicable).
- (c) Provided that all Margin payments in respect of the Set have been paid by the Clearing Member to the Clearing House or repaid by the Clearing House, the amount payable for cash settlement of any Future shall be the net gain or loss, as the case may be, based on the price at which Open Contract Positions are recorded on the Clearing

Part 8 Options

Part 8 of the Rules does not apply to CDS Contracts or FX Contracts. References to Contracts in this section are to Energy Contracts. References to Customer Accounts and Proprietary Accounts in this section are references to such accounts as are designated for Energy Contracts.

Rule 801 Payment of Premium

- (a) A Buying Clearing Member that becomes party to an Option shall be obliged to pay to the Clearing House the premium for the Option at the time specified in the Contract Terms.
- (b) A Selling Clearing Member that becomes party to an Option will be credited by the Clearing House with an amount equal to the premium for the Option at the time specified in the Contract Terms.

Rule 802 Reference Prices

- (a) The Clearing House will specify the Reference Price for any Option Set.
- (b) The Reference Price will generally be determined on the basis of data provided by the Market on which the Contract in question is traded.
- (c) The Clearing House shall be entitled to determine the Reference Price itself, at its discretion, if:
 - (i) a Market fails on any day to determine a Reference Price;
 - (ii) a Market fails to provide the Clearing House with necessary data for determination of a Reference Price;
 - (iii) there is an error in data provided by a Market; or
 - (iv) the Clearing House at its discretion otherwise considers it appropriate to do so.

Rule 803 Exercise of Options

- (a) An Option Contract may be exercised only by a Clearing Member with a Long Open Contract Position or by the Clearing House in respect of a Contract in which it is Long. Option Contracts may only be exercised by a Clearing Member for any Option Set for such number of Contracts as are reflected in the Clearing Member's Open Contract Position (plus any Contracts not included in the Open Contract Position), separately for each of the positions on the Clearing Member's:
 - (i) Proprietary Account;
 - (ii) gross Long positions on its Non-DCM Customer Account (if applicable);
 - (iii) gross Short positions on its Non-DCM Customer Account (if applicable);
 - (iv) gross Long positions on its DCM Customer Account (if applicable);

- (c) As soon as practicable after the Clearing House has declared that a Clearing Member is subject to an Event of Default, the Clearing House shall issue a Default Notice to the Defaulter and shall provide a copy of such Default Notice to any other party to an affected Contract (if any). The Clearing House will issue a Circular in respect of any Default Notice specifying the name of the Defaulter. The Clearing House may at its discretion publish a copy of the relevant Default Notice in or together with a Circular. The Clearing House shall, as soon as reasonably practicable after issuing a Default Notice, appoint a day on which any net sums certified under Rule 905 are to be paid.
- (d) The Clearing House may assume that the occurrence of any Event of Default means that a Clearing Member is unable, or likely to be unable, to meet its obligations under these Rules or in respect of any Contract.

Rule 902 *Liquidation following an Event of Default*

- (a) Where a Person is subject to an Event of Default, the Clearing House may take such steps pursuant to this Part 9 and Part 11 as appear in the circumstances to be necessary or expedient to discharge all the Defaulter's rights and liabilities under or in respect of Contracts to which it is party, to protect the Clearing House and its non-defaulting Clearing Members and to complete the process described in this Part 9 and Part 11. All Contracts to which a Defaulter is party (which are not voidable and voided by the Clearing House pursuant to Part 4) shall be liquidated in the manner set out in Rule 903 below unless and to the extent that:
 - (i) the Defaulter's rights and obligations under such Contracts are transferred or sold to and accepted by one or more other Clearing Members (each, a "Transferee Clearing Member"), with the prior consent of the Clearing House in the case of each transfer or sale at a price agreed between the Clearing House and the relevant Transferee Clearing Member;
 - (ii) the Clearing House determines in its discretion that the protection of the financial integrity of the Clearing House does not require such a liquidation;
 - (iii) such liquidation is delayed because of the cessation or curtailment of trading on an Exchange which lists such Contracts;~~or~~
 - (iv) the Defaulter acts as Buying Clearing Member and Selling Clearing Member in respect of Contracts of the same Set, in which case the Clearing House shall be entitled to net, offset, mutually close out or terminate such Contracts (or any part thereof) up to the extent that, following such netting, offsetting, closing out or termination, Contracts representing in aggregate the Open Contract Position of the Defaulter in the relevant Set are recognised; and, in the case of CDS Contracts, the Clearing House shall be entitled (but shall not be required) to amend the records of trades recorded in Deriv/SERV accordingly, subject always to Rule 102(p); or
 - (v) two FX Forward Contracts of a Defaulter (or parts thereof) are combined and replaced by a single FX Forward Contract, which may occur where the Defaulter is Party A under one of the FX Forward Contracts in respect of a particular currency and Party B under the other FX Forward Contract in

respect of the same currency, and those two FX Forward Contracts have the same FX Value Date.

The Clearing House shall be entitled, at its discretion, to take or arrange for any of the steps described in Rule 902(a)(i), (ii), (iii), (iv) or (iii) as part of its default proceedings. If any Contracts recorded in a Defaulter's Customer Account are subject to any transfer or sale pursuant to Rule 902(a)(i):

- (A) any Margin recorded in a Defaulter's Customer Account may, at the discretion of the Clearing House, be transferred from the Defaulter's Customer Account to the Transferee Clearing Member's Customer Account;
- (B) to the extent that any transfer of Margin takes place in accordance with Rule 902(a)(A), the Defaulter shall have no claim against the Clearing House for return of such Margin and the Clearing House shall be released from any liability or obligation to return such Margin (or any property in substitution thereof) to the Defaulter; and
- (C) as between the Transferee Clearing Member and the Clearing House, the Clearing House shall have all rights in relation to any Margin transferred pursuant to Rule 902(a)(A) as if the same were Margin delivered to the Clearing House directly by the Transferee Clearing Member.

Any transfer, sale or acceptance pursuant to Rule 902(a)(i) may take place pursuant to a termination of Contracts between the Clearing House and a Defaulter and the entry into of new Contracts with the Transferee Clearing Member, rather than as a transfer or sale, at the discretion of the Clearing House.

- (b) If it is determined pursuant to Rule 902(a) not to liquidate any Contracts to which the Defaulter is party, or if the Clearing House is unable for any reason to liquidate such Contracts, in a prompt and orderly fashion, the Clearing House may authorise the execution from time to time for the account of the Clearing House, for the purpose of an orderly unwind of any Contracts to which a Defaulter is party or reducing the risk to the Clearing House and the risk to Clearing Members (in the case of Clearing Members, except to the extent that reducing any risk to Clearing Members creates or increases any risk for the Clearing House) resulting from the continued maintenance of such Contracts, of hedging transactions including, without limitation, the purchase, exercise, sale or grant of Contracts. Any such hedging transactions that are executed shall be submitted by Clearing Members against whom they are executed to the Clearing House for Clearing on a daily basis. Any costs or expenses, including losses, sustained by the Clearing House in connection with transactions effected for its account pursuant to this Rule 902 shall be charged to the Defaulter and any gains (net of any costs and expenses) shall be credited to the Defaulter.
- (c) Upon an Event of Default being declared, any accrued or invoiced amounts shall be immediately due and payable by the Defaulter to the Clearing House.
- (d) If a ~~CDS~~ Contract is terminated pursuant to an automatic early termination provision, or under Applicable Law as a result of any Event of Default or related event, or if a

CDS Contract is terminated in circumstances in which the third sentence of Rule 209(c) applies, Rules 902(a), 902(b), 902(c), 903, 904 and 905 shall apply *mutatis mutandis* in relation to such terminated CDS Contract and rights, obligations and liabilities relating thereto. For the avoidance of doubt, in any case where this Rule 902(d) applies as a result of a CDS Contract being terminated in circumstances in which the third sentence of Rule 209(c) applies, Rules 903(a)(~~xix~~xiii) and 904 shall not apply to the extent that the same are disapplied by Rule 209(c).

Rule 903 *Method of Closing Out*

- (a) Contracts (which are not voidable and voided by the Clearing House pursuant to Part 4) to which a Defaulter is party which, pursuant to Rule 902 are required to be liquidated in accordance with this Rule 903 (and any contracts to which the Defaulter is party referred to in Rule 902(b) including those arising from hedging transactions made pursuant to Rule 902(b), which shall be treated as if they were "Contracts" subject to this Rule 903), shall be liquidated in such manner as the Clearing House in its discretion may direct for the purposes of discharging all the rights, obligations and liabilities of the Defaulter (provided that in respect of Contracts, this does not include, where the Defaulter acts as agent, any rights or liabilities attributable to the Defaulter arising out of the relationship of principal and agent), including pursuant to such powers as are granted pursuant to the Clearing Membership Agreement. Without prejudice to the generality of the foregoing, at the Clearing House's discretion:
- (i) Any such liquidation may be effected by placing, with one or more members of an Exchange, Clearing Organisation or over-the-counter marketplace upon which the relevant category of Contract is traded, orders for the purchase, grant, exercise or sale of Contracts. The Clearing House may designate and authorise an individual to be responsible for the placement of such orders or may enter into Contracts with non-defaulting Clearing Members by way of auction.
 - (ii) Contracts on opposite sides of the market, for Energy Contracts having different expiration months or, for CDS Contracts having different series or version numbers or scheduled termination dates, or for FX Contracts of a particular Set having different FX Value Dates, may be liquidated by any transactions, Invoicing Back or the creation of new Contracts at the Clearing House's discretion (regardless of whether they are held for different accounts or different beneficial owners), for purposes of liquidation of Contracts, hedging market risks of the Defaulter or otherwise.
 - (iii) FX Forward Contracts of a Defaulter having different FX Value Dates may be combined, terminated and replaced by any transactions, Invoicing Bank or the creation of new FX Forward Contracts at the Clearing House's discretion (regardless of whether they are held for different accounts or different beneficial owners), for purposes of liquidation of Contracts, hedging market risks of the Defaulter or otherwise, if the Defaulter is Party A under one of the FX Forward Contracts in respect of a particular currency and Party B under the other FX Forward Contract in respect of the same currency.

- (iv) ~~(iii)~~ Any Contracts (including for the Defaulter's Customer Accounts) which are sale and purchase Contracts of the same Set may be terminated by way of off-set.
- (v) ~~(iv)~~ An Option may be liquidated by closing transactions, exercise or abandonment, at the discretion of the Clearing House, and in any case where an Option is exercised, the Clearing House may liquidate the underlying Future, if any, resulting from such exercise in accordance with the provisions of this Rule 903.
- (vi) ~~(v)~~ Notwithstanding any other provision of this Rule 903, any such liquidation may be effected without placing orders for execution, by making appropriate book entries on the records of the Clearing House (including, without limitation, by pairing and cancelling offsetting Long and Short positions in the same Future or Option Set ~~or~~, 'Selling Clearing Member' and 'Buying Clearing Member' positions in any Set of CDS Contracts, or 'Party A' and 'Party B' positions in any Set of FX Contracts) at a price, for Futures or Options Contracts equal to the Settlement Price on the day such liquidation is ordered ~~or~~, for CDS Contracts at the Mark-to-Market Price, or for FX Contracts at the FX Market Price or in any case at such other price as the Clearing House may establish.
- (vii) ~~(vi)~~ The Clearing House shall be entitled (without the prior or subsequent consent or agreement of the Defaulter or any court order) to sell, transfer, value or create any interest in any Permitted Cover, Margin, Guaranty Fund Contributions or other assets that remain credited to the Defaulter's Proprietary Accounts or Customer Accounts (as applicable, subject to Rule 102(p)) or are otherwise in the Clearing House's possession (subject always to Rule 102(p)), subject to an obligation to account to the Defaulter for the net proceeds of such actions after having deducted the Clearing House's reasonable and properly incurred expenses and costs in doing so in accordance with this Part 9.
- (viii) ~~(vii)~~ The Clearing House shall be entitled to settle any Contract in respect of which settlement may have been or may otherwise (but for the Event of Default) have been requested by the Defaulter.
- (ix) ~~(viii)~~ The Clearing House shall be entitled to take such actions, take or make delivery and give such notices on behalf of the Defaulter in respect of a Contract under delivery as it determines; or to make or receive a tender in the Defaulter's name.
- (x) ~~(ix)~~ The Clearing House shall be entitled to determine an amount due from the Defaulter in substitution of delivery obligations.
- (xi) ~~(x)~~ The Clearing House shall be entitled to take any other action as it deems to be necessary or prudent.
- (xii) ~~(xi)~~ The Clearing House's powers to convert currency under Rule 107 may be applied.

(xiii) ~~(xii)~~-To the extent that the Clearing House does not terminate, transfer or close out all of the CDS Contracts of a Defaulter, the Clearing House may at its discretion require the entry into of new CDS Contracts between the Clearing House and CDS Clearing Members that are not Defaulters which CDS Contracts replace any remaining CDS Contracts of the Defaulter at a price determined by the Clearing House, taking into account the minimum target price determined in accordance with the Procedures, on a *pro rata* basis (or as near as practicable, with odd lots determined by the Clearing House and assigned randomly) in proportion to the size of each CDS Clearing Member's required CDS Guaranty Fund Contribution relative to the aggregate of all required CDS Guaranty Fund Contributions. In any such circumstances, the provisions of Part 4 of the Rules (including without limitation Rule 401(a)(x)) shall apply to the formation of any new CDS Contracts resulting from such action, as part of the Clearing House's default rules. To the extent that any new CDS Contracts arise pursuant to the procedure set out in this Rule 903(a)~~(xix)~~(xiii), an equal notional amount of CDS Contracts of each relevant Set to which the Defaulter was party shall hereby be liquidated.

(xiv) To the extent that the Clearing House does not terminate, transfer or close out all of the FX Contracts of a Defaulter, the Clearing House may at its discretion require the entry into of new FX Contracts between the Clearing House and FX Clearing Members that are not Defaulters which FX Contracts replace any remaining FX Contracts of the Defaulter at a price determined by the Clearing House, taking into account the minimum target price determined in accordance with the Procedures, on a *pro rata* basis (or as near as practicable, with odd lots determined by the Clearing House and assigned randomly) in proportion to the size of each FX Clearing Member's required FX Guaranty Fund Contribution relative to the aggregate of all required FX Guaranty Fund Contributions. In any such circumstances, the provisions of Part 4 of the Rules (including without limitation Rule 401(a)(xii)) shall apply to the formation of any new FX Contracts resulting from such action, as part of the Clearing House's default rules. To the extent that any new FX Contracts arise pursuant to the procedure set out in this Rule 903(a)(xiv), an equal amount of FX Contracts of each relevant Set to which the Defaulter was party shall hereby be liquidated.

- (b) If, as a result of the rules of an Exchange which limit fluctuations in price or other circumstances, it is not possible to liquidate all Contracts to which the Defaulter is party pursuant to Rule 903(a), the Clearing House may liquidate such Contracts by taking opposite positions for Energy Contracts in Contracts in the current expiration month ~~and~~, for CDS Contracts in Contracts of a different series or version number or scheduled termination date ~~or~~, for FX Contracts, in Contracts of a different FX Value Date, and liquidating the resultant offset positions.
- (c) All liquidations made pursuant to this Rule 903 shall be for the account and risk of the Defaulter.

Rule 904 *Amounts Payable to the Clearing House*

Upon completion of the liquidation or transfer of the positions of a Defaulter pursuant to Rule 903, the Defaulter shall be liable to the Clearing House to make payment in respect of all the

of which cash settlement is to be made as calculated by the Clearing House at its discretion (if payable to the Clearing Member being a positive number and hence set off against any amount *L-A* if that amount is also a positive number or if payable to the Clearing House being a negative number and hence aggregated with any amount *L-A* if that amount is a positive number), in any case excluding any amount included under *C*, *M*, *GFC* or *SC*;

C = if relevant, any sum owed by or to the Clearing House to or from a recognised investment exchange or another recognised clearing house of which the Defaulter is or was a member, under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the Defaulter chose to participate (if payable to the Clearing Member being a positive number and hence set off against any amount *L-A-D* if that amount is also a positive number or if payable to the Clearing House being a negative number and hence aggregated with any amount falling under *L-A-D* if that amount is a positive number);

M = any property provided by or on behalf of the Defaulter as Original Margin, Initial Margin, Portfolio Risk Margin, Physical Settlement Margin, FX Delivery Margin, Original FX Margin, FX Variation Margin or margin under Rule 502(g) or in satisfaction of such Margin requirements, including any such Margin transferred to the Clearing House by the Defaulter and any amounts received by the Clearing House pursuant to a letter of credit or Controller Guarantee entered into in favour of the Clearing House in satisfaction of such applicable Margin requirements, subject in any case to a deduction for any unsatisfied claims arising out of the default of the Defaulter before the Default in relation to which the calculation is being made, excluding any Margin that would otherwise fall under amount *M* transferred to a Transferee Clearing Member pursuant to Rule 902(a);

GFC = any property provided by or on behalf of the Defaulter as Guaranty Fund Contributions;

SC = any property provided by or on behalf of the Defaulter that constitutes Surplus Collateral, including any amounts received by the Clearing House pursuant to a letter of credit or Controller Guarantee entered into in favour of the Clearing House surplus to applicable Margin requirements;

OA = the aggregate of any amounts not falling under *A*, *D*, *C*, *M*, *GFC* or *SC* standing to the credit of the Defaulter or payable to the Defaulter or any right or claim of the Defaulter against the Clearing House, in any case whether pursuant to these Rules, any Contract or otherwise (including without limitation any amount payable to the Defaulter due to any breach by the Clearing House of these Rules), in any case at the discretion of the Clearing House; and

OL = the aggregate of any other amounts not falling under *L* payable by the Defaulter to the Clearing House or any right or claim of the Clearing House against the Defaulter, in any case whether pursuant to these Rules, any Contract or otherwise (including without limitation any fines payable pursuant to Part 10 and any other amounts payable in respect of any breach by the Defaulter of these Rules in either case not falling under *L*), in any case at the discretion of the Clearing House,

Clearing House and the Defaulter pursuant to this Rule 905. Where there is more than one separately certified amount N certified under Rule 905(d) as a result of Rule 905(b), each amount so certified shall be treated as a separate obligation which cannot be netted off against another N .

- (d) Each amount N shall be certified by the Clearing House promptly upon its determination. Such determination may be delayed or withheld until such time as all relevant sums and components have been evaluated and until the value or sale proceeds of any non-cash Margin, Surplus Collateral, Guaranty Fund Contributions or other assets are determined, received or available. A certificate of the Clearing House made pursuant to this Rule 905 shall be conclusive as to the amount required to be paid by any Defaulter in discharge of its rights and liabilities in respect of the Contracts to which such certificate relates or by any other Person in relation to such Event of Default.
- (e) The Clearing House may co-operate, by the sharing of information and otherwise, with any Governmental Authority, Clearing Organisation, Exchange or Insolvency Practitioner having responsibility for any matter arising out of, or connected with, an Event of Default or the default of a recognised investment exchange or another recognised clearing house.
- (f) The Clearing House will report to the Defaulter or any relevant Insolvency Practitioner, on steps taken pursuant to this Part 9.
- (g) Where a Defaulter enters into Contracts in more than one capacity for purposes of section 187 of the Companies Act 1989, separate net sums shall be calculated pursuant to Rule 905(a) and 905(b) in respect of each capacity in which the Defaulter acts. If a Disclosed Principal Member and the Clearing Member that appointed the Disclosed Principal Member are both Defaulters, the Clearing House shall be entitled to set off any amount or asset to the credit of either Defaulter against any liability or obligation of the other Defaulter for the purposes of calculating any net sum under this Rule 905 and may exercise any of its powers under this Part 9 accordingly.
- (h) For the purposes of calculating amounts L and A in Rule 905(a), the amount payable by or to the Defaulter in respect of any Contract or Open Contract Position is the difference between:
 - (i) the price of the Contract or Open Contract Position recorded in the Clearing House's books for the later of: (A) the last date on which a payment in respect of Variation Margin, FX Variation Margin or Mark-to-Market Margin was successfully and fully made by the Clearing Member to or to the account of the Clearing House; or (B) the last date on which a return of amounts following a Variation Margin, FX Variation Margin or Mark-to-Market Margin call was successfully and fully made by the Clearing House to the Clearing Member or to the account of the Clearing Member; and
 - (ii) the price at which the Contract or Open Contract Position was sold, transferred, terminated or liquidated pursuant to this Part 9.
- (i) In respect of any Contract to which a Defaulter and ICE Clear Europe are parties that arises pursuant to these Rules as a result of trading on an Exchange that is a

Part 11 Guaranty Funds

Rule 1101 *Establishment and parameters of the Guaranty Funds*

- (a) There shall be ~~two~~three separate Guaranty Funds operated by the Clearing House: the ~~CDS Guaranty Fund and the Energy Guaranty Fund. CDS Clearing Members shall be liable to make and maintain CDS, the CDS Guaranty Fund, and the FX Guaranty Fund Contributions.~~ Energy Clearing Members shall be liable to make and maintain Energy Guaranty Fund Contributions. CDS Clearing Members shall be liable to make and maintain CDS Guaranty Fund Contributions. FX Clearing Members shall be liable to make and maintain FX Guaranty Fund Contributions. The total amount required in each Guaranty Fund will be established by the Clearing House in accordance with the Procedures. The total amount of the Energy Guaranty Fund will be expressed in USD and will be reviewed quarterly by the Clearing House. The total ~~amount~~amounts of the CDS Guaranty Fund and the FX Guaranty Fund will be expressed in the currencies set out in the Procedures and will be reviewed periodically by the Clearing House in advance of the end of each Guaranty Fund Period for each of those Guaranty Funds. If the Clearing House determines that the total amount in any Guaranty Fund is to change, Clearing Members will be given notice by Circular and will be informed of their new Guaranty Fund Contribution requirements prior to the start of the Guaranty Fund Period when the change becomes effective.
- (b) The Clearing House will communicate to Clearing Members by Circular the basis on which their Guaranty Fund Contributions are calculated.
- (c) The Clearing House may vary the parameters by reference to which Guaranty Fund Contributions are calculated from time to time and at any time upon issuing a Circular to Clearing Members. Any new parameters will come into effect on the date of the next applicable re-calculation of Guaranty Fund Contributions, unless Clearing Members are otherwise notified of a different effective date.
- (d) Clearing Members shall be required and liable to make Guaranty Fund Contributions in the amounts and at the times specified in accordance with Rule 1102 and Part 3, such that the Guaranty Funds are always at least of the size required pursuant to this Rule 1101, except in circumstances in which amounts are drawn down from any Guaranty Fund in order to meet liabilities resulting from an Event of Default and such amounts have not been replenished in accordance with this Part 11.

Rule 1102 *Clearing Members' Contributions*

- (a) Clearing Members' required Guaranty Fund Contributions at the start of each Guaranty Fund Period (or otherwise when a payment to a Guaranty Fund is due) will be calculated with reference to the total amount of the relevant Guaranty Fund established pursuant to Rule 1101.
- (b) ~~CDS Guaranty Fund Contributions for each CDS Clearing Member will be calculated each Guaranty Fund Period based on criteria set out in the Procedures and Circulars.~~ Energy Guaranty Fund Contributions for each Energy Clearing Member will be proportional to its relative share of the total of the average of the highest valid daily intra-day calculations of each Clearing Member as calculated by the Clearing House, in accordance with Rule 503(b), over the preceding Guaranty Fund Period, subject to

the minimum contribution of any one Clearing Member being USD 1 million. CDS Guaranty Fund Contributions for each CDS Clearing Member and FX Guaranty Fund Contributions for each FX Clearing Member will be calculated each Guaranty Fund Period based on criteria set out in the Procedures and Circulars.

- (c) Required Guaranty Fund Contributions will be calculated or re-calculated, as the case may be, by the Clearing House for each Clearing Member and notified in advance of each Guaranty Fund Period.
- (d) Guaranty Fund Contributions must be in the form of cash or other Permitted Cover, subject to such limits as are specified in the Procedures and Circulars.
- (e) In the event of any change in the value of non-cash Guaranty Fund Contributions, the Clearing Member may be required by the Clearing House to make an additional Guaranty Fund Contribution. Clearing Members will be permitted (and may be required) at any time to make additional Guaranty Fund Contributions (beyond the required Guaranty Fund Contributions) in order to reduce the risk that revaluations of non-cash Permitted Cover result in such additional Guaranty Fund Contributions falling due.
- (f) New Clearing Members admitted to membership of the Clearing House shall make the required minimum Guaranty Fund Contributions plus such other amount as the Clearing House at its discretion determines is necessary based on projected clearing activity. Any such Guaranty Fund Contributions by a new Clearing Member or Clearing Members shall not result in any obligation on the Clearing House to repay any Guaranty Fund Contributions to other Clearing Members and the size of the relevant Guaranty Funds shall be increased accordingly until the end of the relevant Guaranty Fund Period.
- (g) Guaranty Fund Contributions of Clearing Members following termination of its membership of the Clearing House will be returned to the Clearing Member on the first date of the first new Guaranty Fund Period beginning after the transfer or liquidation of all of its positions at the Clearing House and the payment of all other amounts due to the Clearing House (subject to Guaranty Fund Contributions being applied under Part 9 or this Part 11 and further subject to any extension to the Guaranty Fund Period pursuant to Rule 1102(I)). ~~Energy Guaranty Fund Contributions of a Clearing Member that is both an Energy Clearing Member and a CDS Clearing Member following termination of~~ If a Clearing Member that has multiple Membership Categories terminates its membership of the Clearing House in relation to Energy Contracts a particular Membership Category under Rule 209(f), the Guaranty Fund Contribution relating to that Membership Category will be returned to the Clearing Member on the first date of the first new Guaranty Fund Period for the Energy Guaranty Fund beginning after applicable for that Membership Category falling after all of the following have occurred: (i) the transfer or liquidation of all of its Energy Contract positions at the Clearing House and Contracts of the Contract Category corresponding to that Membership Category; (ii) the payment of all other amounts due to the Clearing House in respect of Energy Contracts (subject to Energy Guaranty Fund Contributions) those Contracts. Any obligation of the Clearing House to return any Guaranty Fund Contribution is subject to such Guaranty Fund Contribution being applied under Part 9 or this Part 11 and further subject to any extension to the Guaranty Fund Period for the Energy Guaranty Fund pursuant to

~~Rule 1102(l)). CDS Guaranty Fund Contributions of a Clearing Member that is both an Energy Clearing Member and a CDS Clearing Member following termination of its membership of the Clearing House in relation to CDS under Rule 209(f) will be returned to the Clearing Member on the first date of the first new Guaranty Fund Period for the CDS Guaranty Fund beginning after the transfer or liquidation of all of its CDS Contract positions at the Clearing House and the payment of all other amounts due to the Clearing House in respect of CDS Contracts (subject to CDS Guaranty Fund Contributions being applied under Part 9 or this Part 11 and further subject to any extension to the Guaranty Fund Period for the CDS Guaranty Fund corresponding to that Membership Category pursuant to Rule 1102(l)).~~

- (h) Each Clearing Member will be entitled to receive interest payments on its cash Guaranty Fund Contributions each quarter through the banking arrangements detailed in Part 3 and no accommodation charges will apply to any non-cash Guaranty Fund Contributions.
- (i) In the event of application of any Guaranty Fund Contributions taking place pursuant to Rule 1103 or 1104, the Clearing House shall:
 - (i) give notice by Circular of the amount by which each relevant Guaranty Fund has been reduced;
 - (ii) notify each Clearing Member and any relevant former Clearing Member of the amount for which it is liable to make additional Guaranty Fund Contributions in order to replenish the relevant Guaranty Funds;
 - (iii) in the case of any Energy Guaranty Fund Contributions being applied, specify the new amount of each of the Clearing House Energy Contributions by Circular; and
 - (iv) in the case of any CDS Guaranty Fund Contributions being applied, specify the new amount of each of the Clearing House CDS Contributions by Circular.

Energy Clearing Members must make required Energy Guaranty Fund Contributions within ten Business Days of the notice under Rule 1102(i)(ii), or on or before such other later date as is specified by the Clearing House at its discretion. CDS Clearing Members must make required CDS Guaranty Fund Contributions and FX Clearing Members must make required FX Guaranty Fund Contributions prior to the opening of business on the first Business Day following the notice under Rule 1102(i)(ii) or such other later date as is specified by the Clearing House at its discretion. The Clearing House shall ensure that any specified new Clearing House Contributions are held by it in accordance with Rule 1104(e) at the same date as Guaranty Fund Contributions for the relevant Guaranty Fund are so due. Any obligation on a Clearing Member to make payments pursuant to this Rule 1102(i) is separate from, and shall apply in addition to, any obligation to make payment in respect of Energy Assessment Contributions pursuant to Rule 1105 (subject only to the provisions of Rules 1105(h) and 1105(i)) or CDS Assessment Contributions pursuant to Rule 1106 (subject only to the provisions of Rule 1106(h) and 1106(i)) or FX Assessment Contributions pursuant to Rule 1107 (subject only to the provisions of Rule 1107(h) and Rule 1107(i)).

(j) If:

- (i) an Event of Default is declared in relation to more than one Defaulter contemporaneously (excluding an Event of Default declared in respect of a Disclosed Principal Member, only when an Event of Default is declared contemporaneously in respect of the Clearing Member that identified that Disclosed Principal Member in accordance with Rule 201(h)) (the defaulter in respect of whom default proceedings are first completed being the "**First Defaulter**" and any other defaulter being an "**Additional Defaulter**" or, if default proceedings are completed at the same time, the Defaulter whose name would appear first alphabetically being the "**First Defaulter**" and any other Defaulter or Defaulters being an "**Additional Defaulter**"); or
- (ii) a separate Event of Default is declared in relation to a Defaulter or Defaulters that has or have made a Guaranty Fund Contribution or Guaranty Fund Contributions to the same Guaranty Fund (any, an "**Additional Defaulter**") prior to the termination of default proceedings in relation to an existing Defaulter ("**First Defaulter**"),

and recourse is made to Guaranty Fund Contributions in respect of the First Defaulter (or any Additional Defaulter), Clearing Members shall be required to replenish the relevant Guaranty Fund pursuant to Rule 1102(i) separately in respect of each Defaulter causing a reduction in the Guaranty Fund. The Clearing House may apply Guaranty Fund Contributions and Clearing House Contributions resulting from replenishment following default proceedings in relation to the First Defaulter to meet the liabilities of an Additional Defaulter and may apply Guaranty Fund Contributions and Clearing House Contributions resulting from replenishment following default proceedings in relation to an Additional Defaulter to meet the liabilities of another Additional Defaulter. Other than as set out in this Rule 1102(j), amounts transferred by Clearing Members or former Clearing Members in order to replenish Guaranty Fund Contributions under Rule 1102(i) or amounts designated as Clearing House Contributions may not be applied to meet liabilities arising in connection with any Event of Default occurring prior to the time at which the relevant replenishment or designation is required under these Rules.

- (k) In the event of the Clearing House applying any Guaranty Fund Contributions of non-defaulting Clearing Members, the Clearing House will make payment to the Persons whose Guaranty Fund Contributions have been applied (and retain assets in respect of Clearing House ~~CDS~~Energy GF Contributions and Clearing House ~~Energy~~CDS GF Contributions) *pro rata* in respect of any amounts received from the Defaulter as a result of its being a creditor of the Defaulter in the Defaulter's Insolvency or otherwise (net of the Clearing House's costs of recovery), up to the amount by which the relevant Guaranty Fund was reduced (excluding the Guaranty Fund Contribution of the Defaulter) but without counting for interest, subject to the Clearing House first: (i) retaining or repaying amounts up to the amount of any other assets of the Clearing House (including following claims under insurance policies) or other third parties applied to meet any liability following exhaustion of the assets specified in Rule 1103 or in substitution of any such assets; and (ii) making reimbursement payments to Persons that have made Assessment Contributions (in that order of priority).

- (l) If an Event of Default occurs prior to the end of a Guaranty Fund Period where the total amount of Guaranty Fund Contributions or the Guaranty Fund Contribution of any particular Clearing Member would otherwise subsequently be reduced in the next Guaranty Fund Period, the Clearing House shall at its discretion be entitled to defer the end of the current Guaranty Fund Period and start of the next Guaranty Fund Period until the completion of default proceedings or retain all then held Guaranty Fund Contributions made to any potentially affected Guaranty Fund. In either such circumstance, the Clearing House shall not be obliged to make any repayment to Clearing Members in respect of Guaranty Fund Contributions to any such Guaranty Fund until and subject to completion of the relevant Default proceedings pursuant to Part 9 and this Part 11. For the avoidance of doubt: in such circumstances, the Clearing House shall nonetheless be entitled to make periodic adjustments to Guaranty Fund Contributions as otherwise set out in these Rules at its discretion; and this Rule 1102(l) is without prejudice to Rule 1102(m) and Rule 1102(n).
- (m) If a CDS Clearing Member's business changes in a material way, a CDS Clearing Member's anticipated clearing volume of Contracts indicates a potential increase in risk to the Clearing House at any time during a Guaranty Fund Period or as otherwise required by the Procedures, which determinations shall be made and conducted at the Clearing House's discretion, then the Clearing House may require the CDS Clearing Member to increase the amount of its Guaranty Fund Contribution at the time specified by the Clearing House. Any such Guaranty Fund Contributions shall not result in any obligation on the Clearing House to repay any Guaranty Fund Contributions to other Clearing Members and the size of the relevant Guaranty Funds shall be increased accordingly until the end of the relevant Guaranty Fund Period.
- (n) If an FX Clearing Member's business changes in a material way, an FX Clearing Member's anticipated clearing volume of Contracts indicates a potential increase in risk to the Clearing House at any time during a Guaranty Fund Period or as otherwise required by the Procedures, which determinations shall be made and conducted at the Clearing House's discretion, then the Clearing House may require the FX Clearing Member to increase the amount of its Guaranty Fund Contribution at the time specified by the Clearing House. Any such Guaranty Fund Contributions shall not result in any obligation on the Clearing House to repay any Guaranty Fund Contributions to other Clearing Members and the size of the relevant Guaranty Funds shall be increased accordingly until the end of the relevant Guaranty Fund Period.

Rule 1103 *Application of Assets upon an Event of Default*

- (a) Notwithstanding any other provision of these Rules:
- (i) if a Defaulter was only liable to make Energy Guaranty Fund Contributions, no CDS Contribution relating to a single Membership Category, no Guaranty Fund Contributions, CDS Assessment Contributions, or Clearing House CDS Contributions relating to a different Membership Category shall be applied by the Clearing House to meet any obligations or liabilities of the Defaulter or any loss or shortfall to the Clearing House arising from the Event of Default;
- (ii) if a Defaulter was only liable to make CDS-Guaranty Fund Contributions, relating to two Membership Categories, no Energy-Guaranty Fund Contributions, Energy Assessment Contributions, or Clearing House Energy

Contributions relating to a different Membership Category shall be applied by the Clearing House to meet any obligations or liabilities of the Defaulter or any loss or shortfall to the Clearing House arising from the Event of Default;

(iii) any Guaranty Fund Contributions (including additional Guaranty Fund Contributions) invoiced to or transferred by Clearing Members that are not Defaulters or accrued after the declaration of an Event of Default but prior to the completion of the relevant default proceedings for the Event of Default shall not be applied to meet any obligations or liabilities of the Defaulter or any loss or shortfall to the Clearing House arising in connection with that prior Event of Default;

(iv) if a Defaulter was ~~both a CDS Clearing Member and an Energy Clearing Member and had one or more other Membership Categories, and~~ any Energy Guaranty Fund Contribution of the Defaulter is applied other than as described in Rule 1103(fg)(ii)(A), no non-defaulting Energy Clearing Member shall be required to make any payment to replenish the Energy Guaranty Fund under Rule 1102(i) or (j) in respect of the resulting incremental shortfall to the Energy Guaranty Fund caused by such application of assets prior to the date which is the first day of the next following Guaranty Fund Period for the Energy Guaranty Fund (other than pursuant to Rule 902(c), if the non-defaulting Energy Clearing Member becomes a Defaulter);

(v) if a Defaulter was ~~both a CDS Clearing Member and an Energy Clearing Member had one or more other Membership Categories, and~~ any CDS Guaranty Fund Contribution of the Defaulter is applied other than as described in Rule 1103(fg)(ii)(B), no non-defaulting CDS Clearing Member shall be required to make any payment to replenish the CDS Guaranty Fund under Rule 1102(i) or (j) in respect of the resulting incremental shortfall to the CDS Guaranty Fund caused by such application of assets prior to the date which is the first day of the next following Guaranty Fund Period for the CDS Guaranty Fund (other than pursuant to Rule 902(c), if the non-defaulting CDS Clearing Member becomes a Defaulter); and

(vi) if a Defaulter was an FX Clearing Member and had one or more other Membership Categories, and any FX Guaranty Fund Contribution of the Defaulter is applied other than as described in Rule 1103(g)(ii)(C), no non-defaulting FX Clearing Member shall be required to make any payment to replenish the FX Guaranty Fund under Rule 1102(i) or (j) in respect of the resulting incremental shortfall to the FX Guaranty Fund caused by such application of assets prior to the date which is the first day of the next following Guaranty Fund Period for the FX Guaranty Fund (other than pursuant to Rule 902(c), if the non-defaulting FX Clearing Member becomes a Defaulter); and

(vii) ~~(vi)~~ without limitation to the generality of Rule 102(p), this Rule 1103 is subject to Rule 102(p).

(b) In the case of a Defaulter ~~which that~~ was an Energy Clearing Member but ~~not~~ neither a CDS Clearing Member nor an FX Clearing Member, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any

loss or shortfall to the Clearing House upon or following any Event of Default (including in connection with any net sum calculated under Rule 905), in the following order of recourse:

- (i) first, any amounts payable to the Defaulter in respect of Contracts, any Margin or Surplus Collateral and any other amounts falling under *A*, *D*, *C* or *M* in Rule 905(a), in the order specified in Rule 905(a);
 - (ii) second, Energy Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Energy Guaranty Fund Contributions falling under amount *GFC* in Rule 905(a);
 - (iii) third, any amounts falling under *SC* or *OA* in Rule 905(a) in the order specified in Rule 905(a) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in paragraphs (iv) to (vii) below but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);
 - (iv) fourth, the Clearing House Energy Initial Contribution;
 - (v) fifth:
 - (A) Energy Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus Energy Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and
 - (B) the Clearing House Energy GF Contribution,
on a basis *pro rata* to the sum of the total of all Energy Guaranty Fund Contributions (excluding Energy Guaranty Fund Contributions of the Defaulter and Energy Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House Energy GF Contribution at the time of the Event of Default;
 - (vi) sixth, any claims under default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that are available to the Clearing House as a result of the Default; and
 - (vii) seventh, Energy Assessment Contributions received by the Clearing House pursuant to Rule 1105.
- (c) In the case of a Defaulter which was a CDS Clearing Member but ~~not~~neither an Energy Clearing Member nor an FX Clearing Member, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any loss or shortfall to the Clearing House upon or following any Event of Default

(including in connection with any net sum calculated under Rule 905), in the following order of recourse:

- (i) first, any amounts payable to the Defaulter in respect of Contracts, any Margin or Surplus Collateral and any other amounts falling under *A, D, C* or *M* in Rule 905(a), in the order specified in Rule 905(a);
- (ii) second, CDS Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such CDS Guaranty Fund Contributions falling under amount *GFC* in Rule 905(a);
- (iii) third, any amounts falling under *SC* or *OA* in Rule 905(a) in the order specified in Rule 905(a) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in paragraphs (iv) to (vi) below but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);
- (iv) fourth, the Clearing House CDS Initial Contribution;
- (v) fifth:
 - (A) CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus CDS Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and
 - (B) the Clearing House CDS GF Contribution,

on a basis pro rata to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter and CDS Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House CDS GF Contribution at the time of the Event of Default; and
- (vi) sixth, CDS Assessment Contributions received by the Clearing House pursuant to Rule 1106.

(d) In the case of a Defaulter which was an FX Clearing Member but neither an Energy Clearing Member nor a CDS Clearing Member, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any loss or shortfall to the Clearing House upon or following any Event of Default (including in connection with any net sum calculated under Rule 905), in the following order of recourse:

- (i) first, any amounts payable to the Defaulter in respect of Contracts, any Margin or Surplus Collateral and any other amounts falling under *A, D, C* or *M* in Rule 905(a), in the order specified in Rule 905(a);

- (ii) second, FX Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such FX Guaranty Fund Contributions falling under amount *GFC* in Rule 905(a);
 - (iii) third, any amounts falling under *SC* or *OA* in Rule 905(a) in the order specified in Rule 905(a) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in paragraphs (iv) to (vi) below but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);
 - (iv) fourth FX Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus FX Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available), on a basis pro rata to the sum of the total of all FX Guaranty Fund Contributions (excluding FX Guaranty Fund Contributions of the Defaulter and FX Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) at the time of the Event of Default; and
 - (v) fifth, FX Assessment Contributions received by the Clearing House pursuant to Rule 1107.
- (e) ~~In the case of a Defaulter which was both a CDS Clearing Member and an Energy Clearing Member~~In the case of a Defaulter which held multiple Membership Categories, separate amounts shall be calculated in accordance with Rules 905(a) and (b) as if they were "net sums", mutatis mutandis in respect of:
- (i) if the Defaulter was an Energy Clearing Member, any amounts, assets or liabilities included or to be included within the calculation of the amount *N* in Rule 905(a) in respect of Energy Contracts, Margin or Surplus Collateral in respect of Energy Contracts, Guaranty Fund Contributions to the Energy Guaranty Fund and any other amounts, assets or liabilities relating in any case exclusively to Energy Contracts of the Defaulter, together with such Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below ("**Energy Default Amount**");
 - (ii) ~~(i)~~if the Defaulter was a CDS Clearing Member, any amounts, assets or liabilities included or to be included within the calculation of the amount *N* in Rule 905(a) in respect of CDS Contracts, Margin or Surplus Collateral in respect of positions in CDS Contracts, Guaranty Fund Contributions to the CDS Guaranty Fund and any other amounts, assets or liabilities relating in any case exclusively to CDS Contracts of the Defaulter, together with such Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below ("**CDS Default Amount**"); and
 - (iii) ~~(ii)~~if the Defaulter was an FX Clearing Member, any amounts, assets or liabilities included or to be included within the calculation of the amount *N* in Rule 905(a) in respect of ~~Energy~~FX Contracts, Margin or Surplus Collateral in

respect of ~~Energy~~ positions in FX Contracts, Guaranty Fund Contributions to the ~~Energy~~ FX Guaranty Fund and any other amounts, assets or liabilities relating in any case exclusively to ~~Energy~~ FX Contracts of the Defaulter, together with such Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below ("~~Energy~~ FX Default Amount").

"~~Non-Exclusive Assets~~" constitute any amounts or assets included or to be included within the calculation of the amount *N* in Rule 905(a) not relating exclusively to either ~~Energy Contracts or CDS Contracts~~ any one Contract Category. ~~Non-Exclusive Assets may be included in the calculation of either~~ any of the CDS-Default Amount or the Energy Default Amount ~~Amounts in question or split between both~~ among them, such ~~allocation to particular calculations to be~~ at the Clearing House's discretion, provided that:

- (A) to the extent that ~~both~~ two or more of the ~~CDS-Default Amount and the Energy Default Amount~~ Amounts represent or would (but for this provision) represent a shortfall ("~~Shortfall Default Amounts~~"), the Non-Exclusive Assets must be included in the calculation of the ~~CDS~~ Shortfall ~~Default Amount and the Energy Default Amount~~ Amounts in proportion to the Margin requirements of the Defaulter for ~~CDS Contracts and Energy Contracts~~ respectively each Contract Category corresponding to each ~~Shortfall Default Amount~~ Shortfall Default Amount immediately prior to the Event of Default until one of the ~~CDS~~ Shortfall ~~Default Amount or Energy Default Amount~~ Amounts would represent zero; and
- (B) subject to the process in (A) first being completed if applicable, to the extent that one or two of the ~~CDS Default Amount or the Energy Default Amount~~ Default Amounts in question represent(s) or would (but for this provision) represent a surplus to the Clearing House and the other ~~represents or others represent~~ or would (but for this provision) represent a shortfall to the Clearing House, the Non-Exclusive Assets must be included in the relevant calculation so as to eliminate or reduce the shortfall pro rata as to the losses.

"~~Non-Exclusive Liabilities~~" constitute any liabilities included or to be included within the calculation of the amount *N* in Rule 905(a) not relating exclusively to either ~~Energy Contracts or CDS Contracts~~ any one Contract Category. ~~Non-Exclusive Liabilities may be included in the calculation of either~~ any of the CDS-Default Amount or the Energy Default Amount ~~Amounts in question or split between both~~ among them, such ~~calculations to be~~ at the Clearing House's discretion, provided that:

- (C) to the extent that ~~both~~ two or more of the ~~CDS-Default Amount and the Energy Default Amount~~ Amounts represent or would (but for this provision) represent a surplus ("~~Surplus Default Amounts~~"), the Non-Exclusive Liabilities must be included in the calculation of the ~~CDS~~ Surplus ~~Default Amount and the Energy Default Amount~~ Amounts in proportion to the Margin requirements of the Defaulter for ~~CDS Contracts and Energy Contracts~~ respectively each Contract Category corresponding to each ~~Surplus Default Amount~~ Surplus Default Amount immediately prior to

the Event of Default until one of the ~~CDS Surplus Default Amount or Energy Default Amount~~ Amounts would represent zero; and

- (D) subject to the process in (C) first being completed if applicable, to the extent that one or two of the ~~CDS Default Amount or the Energy Default Amount~~ represents Default Amounts in question represent(s) or would (but for this provision) represent a surplus to the Clearing House and the other ~~represents or others represent~~ or would (but for this provision) represent a shortfall to the Clearing House, Non-Exclusive Liabilities must first be included in the relevant calculation against the surplus pro rata as to the surpluses.
- (f) ~~(e)~~-In any instance in which assets are to be applied pursuant to Rule 1103(~~fg~~)(ii), Rule 1103(g)(iii), Rule 1103(g)(iv) or Rule 1103(g)(v), the Clearing House shall publish the amount of any Energy Default Amount, CDS Default Amount and/or EnergyFX Default Amount that is required to be calculated under Rule 1103(d) in a Circular. For the avoidance of doubt, any Energy Default Amount, CDS Default Amount and/or EnergyFX Default Amount so published shall not constitute a "net sum" for purposes of Rule 905, the Companies Act 1989 or the Settlement Finality Regulations.

(g) ~~(f)~~-In the case of a Defaulter which was ~~both a CDS Clearing Member and an Energy Clearing Member~~ held multiple Membership Categories, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any loss or shortfall to the Clearing House upon or following any Event of Default (including in connection with any net sum calculated under Rule 905), in the following order of recourse:

- (i) first, any amounts payable to the Defaulter in respect of Contracts, any Margin or Surplus Collateral and any other amounts falling under *A, D, C* or *M* in Rule 905(a), in the order specified in Rule 905(a);
- (ii) second, Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contributions falling under amount *GFC* in Rule 905(a), provided that:

(A) ~~if a Defaulter was an Energy Clearing Member, Energy~~ Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any liabilities relevant to the Energy Default Amount;

(B) ~~if a Defaulter was a CDS Clearing Member, CDS~~ Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any liabilities relevant to the CDS Default Amount;

(C) ~~(B) CDS~~if a Defaulter was an FX Clearing Member, FX Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any liabilities relevant to the ~~CDS~~FX Default Amount; and

(D) ~~(C)~~ if a Defaulter was an Energy Clearing Member, subject to paragraphs (A) ~~and~~ (B) and (C), any Energy Guaranty Fund

Contributions of athe Defaulter may be applied against any other liabilities of the Defaulter but only after the earliest date on which non-defaulting Energy Clearing Members are required to replenish the Energy Guaranty Fund pursuant to Rule 1103(a)(iv) and only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting an Energy Clearing Member; and

(E) ~~(D) if a Defaulter was a CDS Clearing Member,~~ subject to paragraphs (A) and (B) and (C), any CDS Guaranty Fund Contributions of athe Defaulter may be applied against any other liabilities of the Defaulter but only after the earliest date on which non-defaulting CDS Clearing Members are required to replenish the CDS Guaranty Fund pursuant to Rule 1103(a)(v) and only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting aan CDS Clearing Member; and

(E) if a Defaulter was an FX Clearing Member, subject to paragraphs (A), (B) and (C), any FX Guaranty Fund Contributions of the Defaulter may be applied against any other liabilities of the Defaulter but only after the earliest date on which non-defaulting FX Clearing Members are required to replenish the FX Guaranty Fund pursuant to Rule 1103(a)(vi) and only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting an FX Clearing Member;

(iii) third, any amounts falling under *SC* or *OA* in Rule 905(a) in the order specified in Rule 905(a) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in paragraphs (iv) to (vii) below but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);

(iv) fourth:

(A) if a Defaulter was an Energy Clearing Member, the Clearing House Energy Initial Contribution, provided that it shall only be applied up to the extent of any Energy Default Amount notified to Clearing Members in accordance with Rule 1103(ef) and in circumstances in which the Energy Default Amount represents a shortfall or liability; and

(B) if a Defaulter was a CDS Clearing Member, the Clearing House CDS Initial Contribution, provided that it shall only be applied up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 1103(ef) and in circumstances in which the CDS Default Amount represents a shortfall or liability; and

(v) fifth:

- (A) Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus Guaranty Fund Contributions of other Defaulters and proceeds of the realisation thereof, if two or more Default proceedings take place concurrently and any such surplus is available);
- (B) if a Defaulter was an Energy Clearing Member, the Clearing House Energy GF Contribution; and
- (C) if a Defaulter was a CDS Clearing Member, the Clearing House CDS GF Contribution;

provided that:

- (1) if a Defaulter was an Energy Clearing Member, Energy Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House Energy GF Contribution shall only be applied towards and up to the extent of any Energy Default Amount notified to Clearing Members in accordance with Rule 1103(e) and in circumstances in which the Energy Default Amount less any assets applied in accordance with paragraph (f)(iv)(A) represents a shortfall or liability; and
- (2) if a Defaulter was a CDS Clearing Member, CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House CDS GF Contribution shall only be applied towards and up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 1103(e) and in circumstances in which the CDS Default Amount less any assets applied in accordance with paragraph (f)(iv)(B) represents a shortfall or liability; and
- (3) if a Defaulter was an FX Clearing Member, FX Guaranty Fund Contributions of Clearing Members other than the Defaulter in question shall only be applied towards and up to the extent of any FX Default Amount notified to Clearing Members in accordance with Rule 1103(f) and in circumstances in which the FX Default Amount less any assets applied in accordance with paragraph (f)(iv)(C) represents a shortfall or liability

and provided further that:

- (X) in the case of a Defaulter who was an Energy Clearing Member, Energy Guaranty Fund Contributions and the Clearing House Energy GF Contribution are applied on a basis *pro rata* to the sum of the total of all Energy Guaranty Fund Contributions (excluding Energy Guaranty Fund Contributions of the Defaulter in question and Energy Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House Energy GF Contribution at the time of the Event of Default; and

- (Y) in the case of a Defaulter who was a CDS Clearing Member, CDS Guaranty Fund Contributions and the Clearing House CDS GF Contribution are applied on a basis pro rata to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter in question and CDS Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House CDS GF Contribution at the time of the Event of Default; and
- (Z) in the case of a Defaulter who was an FX Clearing Member, FX Guaranty Fund Contributions are applied on a basis pro rata to the sum of the total of all FX Guaranty Fund Contributions (excluding FX Guaranty Fund Contributions of the Defaulter in question and FX Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) at the time of the Event of Default;
- (vi) sixth, if a Defaulter was an Energy Clearing Member, any claims under default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that are available to the Clearing House as a result of the Default, provided that the Clearing House, acting reasonably, must specify in a Circular the extent to which any such claims are applied in respect of any shortfall relating to the Energy Default Amount and any shortfall relating to the ~~CDS~~any other Default Amount(s); and
- (vii) seventh, if a Defaulter was an Energy Clearing Member, Energy Assessment Contributions received by the Clearing House pursuant to Rule 1105 and ~~CDS~~1105, if a Defaulter was a CDS Clearing Member, CDS Assessment Contributions received by the Clearing House pursuant to Rule 1106, and, if a Defaulter was an FX Clearing Member, FX Assessment Contributions received by the Clearing House pursuant to Rule ~~1106-1107~~.
- (h) ~~(g)~~ For the avoidance of doubt, this Part 11, including this Rule 1103, is part of the Clearing House's "default rules" for the purposes of the Companies Act 1989. The requirements of this Rule 1103 shall apply and be binding upon the Clearing House and all Clearing Members including upon the event of any Insolvency affecting the Clearing House or any Clearing Member. The Clearing House (including any Insolvency Practitioner with powers over the Clearing House or other Representative) and all Clearing Members (including any Insolvency Practitioner with powers over any Clearing Member or other Representative) shall, to the extent permitted by Applicable Laws:
- (i) refrain from taking any action or seeking any order of any Governmental Authority that would result in or facilitate any asset or liability being applied contrary to the requirements of this Rule 1103; and
- (ii) take all reasonable steps possible including, without limitation, the application for and procurement of such orders from such Governmental Authorities as are necessary, to ensure that assets of the Clearing House are applied only pursuant to this Rule 1103.

following the application of particular assets in respect of particular Defaults in the order set out in Rule 1103; or (ii) default insurance policies may apply only in relation to losses occurring in relation to certain Sets of Contracts cleared by the Clearing House or particular Guaranty Funds. As a result, it is possible that: (A) insurance receipts may be available to (and applied by) the Clearing House at an earlier order to that specified in Rule 1103 if the total available Guaranty Fund Contributions exceed the Loss Threshold or in respect of a second or subsequent Default where the limit on claims for the Relevant Period has not been exhausted; (B) no or reduced insurance may be available in the case of a second or subsequent Default occurring in a Relevant Period; or (C) the insurance policies (if any) may not provide cover in respect of certain Events of Default. The Clearing House will issue a Circular to Clearing Members specifying the amount of insurance, Loss Threshold, Relevant Period and any restrictions by Set of Contract or Guaranty Fund applicable to any default insurance obtained by the Clearing House. Neither this Rule 1104(d) nor any Circular issued by the Clearing House shall affect the liability of Clearing Members in respect of Guaranty Fund Contributions under these Rules.

- (e) The Clearing House will notify Clearing Members from time to time, by Circular and in accordance with the Procedures, of each of the Clearing House Contributions. The Clearing House undertakes to all non-defaulting Clearing Members from time to time to maintain amounts equal to the total of the Clearing House Contributions in a separate account from its other assets and to use such amounts only for the purposes of meeting shortfalls arising directly or indirectly from Defaults in accordance with this Part 11. The Clearing House undertakes to all non-defaulting Clearing Members from time to time to maintain Clearing House CDS Contributions in an account or accounts separate from Clearing House Energy Contributions. This Rule 1104(e) shall not restrict the Clearing House from investing such amounts in any way that it is able to invest Guaranty Fund Contributions made by Clearing Members.
- (f) The total amount of Guaranty Fund Contributions for each Guaranty Fund and any Clearing House Contributions applied in connection with any Event of Default shall be notified to Clearing Members in a Circular prior to the same being applied.

Rule 1105 *Powers of Assessment: Energy*

- (a) Powers of assessment under this Rule 1105 may be exercised by the Clearing House following an Event of Default occurring in respect of an Energy Clearing Member and the liabilities of a Defaulter that is or was an Energy Clearing Member not having been met pursuant to:
 - (i) Rule 1103(b)(i) to 1103(b)(vi); or
 - (ii) Rule 1103(fg)(i) to 1103(fg)(vi), only to the extent that the Energy Default Amount, less any assets applied in accordance with Rule 1103(fg)(iv)(A), 1103(fg)(v)(B) and Rule 1103(fg)(vi) (in the latter case, only to the extent certified by the Clearing House as applying in relation to the Energy Default Amount), represents a shortfall or a liability.

Immediately upon the Clearing House certifying the Energy Assessment Amount in a Circular, all Energy Clearing Members (other than Defaulters) shall indemnify the

- (h) Upon an Event of Default or Events of Default occurring and Energy Assessment Contributions becoming due, a Clearing Member liable to pay an Energy Assessment Contribution shall be entitled to terminate its membership of the Clearing House with effect from the moment immediately prior to the time at which Energy Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(d), an Energy Clearing Member that terminates its membership in such circumstances shall have no further obligation to replenish the Energy Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further Energy Assessment Contribution payments pursuant to Rules 1105(c) and 1105(d). Rules 209(c) (third sentence only), 209(d) (subject as aforesaid), 209(e)(i) and 209(e)(ii) shall apply in relation to any such termination. Any Clearing Member terminating its membership pursuant to this Rule 1105(h) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for Energy Assessment Contributions was made.
- (i) Upon an Event of Default or Events of Default occurring and Energy Assessment Contributions becoming due, ~~an Energy Clearing Member that is both an Energy Clearing Member and a CDS Clearing Member~~ has multiple Membership Categories and which is liable to pay an Energy Assessment Contribution shall be entitled to terminate its status with the Clearing House as an Energy Clearing Member (maintaining its status as a CDS Clearing Member any other Membership Category or Categories) with effect from the moment immediately prior to the time at which Energy Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(f), a Clearing Member that terminates its status as an Energy Clearing Member in such circumstances shall have no further obligation to replenish the Energy Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further Energy Assessment Contribution payments pursuant to Rules 1105(c) and 1105(d). Any Clearing Member terminating its status as an Energy Clearing Member pursuant to this Rule 1105(i) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for Energy Assessment Contributions was made.

Rule 1106 *Powers of Assessment: CDS Contracts*

- (a) Powers of assessment under this Rule 1106 may be exercised by the Clearing House following an Event of Default occurring in respect of a CDS Clearing Member and the liabilities of a Defaulter that is or was a CDS Clearing Member not having been met pursuant to:
- (i) Rule 1103(c)(i) to 1103(c)(v); or
 - (ii) Rule 1103(fg)(i) to 1103(fg)(vi), only to the extent that the CDS Default Amount, less any assets applied in accordance with Rule 1103(fg)(iv)(B), Rule 1103(fg)(v)(C) and Rule 1103(fg)(vi) (in the latter case, only to the extent certified by the Clearing House as applying in relation to the CDS Default Amount), represents a shortfall or a liability.

Immediately upon the Clearing House certifying the CDS Assessment Amount in a Circular, all CDS Clearing Members (other than Defaulters) shall indemnify the

Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(d), a CDS Clearing Member that terminates its membership in such circumstances shall have no further obligation to replenish the CDS Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further CDS Assessment Contribution payments pursuant to Rules 1106(c) and 1106(d). Rules 209(c) (third sentence only), 209(d) (subject as aforesaid), 209(e)(i) and 209(e)(ii) shall apply in relation to any such termination. Any Clearing Member terminating its membership pursuant to this Rule 1106(h) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for CDS Assessment Contributions was made.

- (i) Upon an Event of Default or Events of Default occurring and CDS Assessment Contributions becoming due, ~~a Clearing Member that is both an Energy Clearing Member and a CDS Clearing Member with multiple Membership Categories~~ and which is liable to pay a CDS Assessment Contribution shall be entitled to terminate its status with the Clearing House as a CDS Clearing Member (maintaining its status as an ~~Energy Clearing Member~~ any other Membership Category or Categories) with effect from the moment immediately prior to the time at which CDS Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(f), a Clearing Member that terminates its status as a CDS Clearing Member in such circumstances shall have no further obligation to replenish the CDS Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further CDS Assessment Contribution payments pursuant to Rules 1106(c) and 1106(d). Rule 209(f) shall apply in relation to any such termination. Any Clearing Member terminating its status as a CDS Clearing Member pursuant to this Rule 1106(i) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for CDS Assessment Contributions was made.

Rule 1107 *Powers of Assessment: FX Contracts*

- (a) Powers of assessment under this Rule 1107 may be exercised by the Clearing House following an Event of Default occurring in respect of an FX Clearing Member and the liabilities of a Defaulter that is or was an FX Clearing Member not having been met pursuant to:

- (i) Rule 1103(c)(i) to Rule 1103(c)(v); or
- (ii) Rule 1103(g)(i) to Rule 1103(g)(vi), only to the extent that the FX Default Amount, less any assets applied in accordance with Rule 1103(g)(vi) (in the latter case, only to the extent certified by the Clearing House as applying in relation to the FX Default Amount), represents a shortfall or a liability.

Immediately upon the Clearing House certifying the FX Assessment Amount in a Circular, all FX Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay FX Assessment Contributions to the Clearing House in accordance with Rule 1107(b).

- (b) The FX Assessment Contribution payable by each FX Clearing Member shall be the amount.

$$\frac{FAA \times FGF(CM)}{FGF(all)}$$

where:

FAA is the FX Assessment Amount certified by the Clearing House in a Circular as the total shortfall following an Event of Default occurring after funds referred to in Rule 1107(a) have been applied, provided that the total FX Assessment Amount shall be no greater than the amount equal to twice the total required FX Guaranty Fund Contributions of all FX Clearing Members immediately prior to the relevant Event of Default (less FX Guaranty Fund Contributions of Defaulters);

FGF(CM) is the required FX Guaranty Fund Contribution of the relevant FX Clearing Member immediately preceding the relevant Event of Default; and

FGF(all) is the total required FX Guaranty Fund Contributions of all FX Clearing Members immediately preceding the relevant Event of Default (less FX Guaranty Fund Contributions of Defaulters).

- (c) A Person that ceases to be an FX Clearing Member shall be subject to obligations to pay FX Assessment Contributions only in respect of:
- (i) Events of Default declared in relation to Clearing Members that are FX Clearing Members occurring prior to the Termination Date (whether or not declared prior to the Termination Date); and
 - (ii) any Events of Default declared in relation to Clearing Members that are FX Clearing Members occurring after the Termination Date but whilst it still has an FX Guaranty Fund Contribution with the Clearing House.

provided that:

- (A) the aggregate amount of all FX Assessment Contributions in respect of all Events of Default for any such Person shall be capped at: (I) in the case of a Person terminating its membership of the Clearing House following an Event of Default or Events of Default where FX Guaranty Fund Contributions have been applied, an amount equal to twice that Person's FX Guaranty Fund Contribution immediately prior to the first Event of Default being declared which led to the relevant application of FX Guaranty Fund Contributions; or (II) in the case of a Person otherwise terminating its membership of the Clearing House, an amount equal to twice that Person's FX Guaranty Fund Contribution on the date of service of the relevant notice of termination; and
 - (B) FX Assessment Contributions made by a Person terminating its membership of the Clearing House pursuant to Rule 1107(h) shall be included for the purpose of calculating such a cap.
- (d) If the FX Assessment Amount is not met by FX Assessment Contribution receipts from FX Clearing Members due to non-payment by an FX Clearing Member or FX Clearing Members, Default of an FX Clearing Member or FX Clearing Members or

otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall shall be re-assessed against all FX Clearing Members (other than Defaulters and Persons that have defaulted in making an FX Assessment Contribution) in accordance with Rule 1107(a), as if the shortfall were the FX Assessment Amount, provided that no FX Clearing Member shall be liable to pay FX Assessment Contributions in respect of a single Default for an amount greater than twice its FX Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 1107(c), further FX Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire FX Assessment Amount has been met in full by FX Assessment Contributions.

- (e) All FX Assessment Contributions shall become due and payable at such time as the Clearing House notifies to FX Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.
- (f) If, after any FX Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation or unpaid FX Assessment Contribution in whole or in part from the Defaulter in question or a Person liable to pay an unpaid FX Assessment Contribution, the Clearing House shall refund the amount so collected (less any expenses of the Clearing House, including without limitation any legal fees and expenses incurred in connection therewith) to other FX Clearing Members (excluding any Defaulter) *pro rata* in respect of paid FX Assessment Contributions relating to the Event of Default in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House or other third parties applied to meet any liability following exhaustion of the assets specified in Rule 1103 or in substitution of any such assets.
- (g) Amounts transferred to the Clearing House by FX Clearing Members in respect of Guaranty Fund Contributions, including without limitation amounts transferred to restore a deficiency in any Guaranty Fund following an Event of Default, do not constitute FX Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of FX Assessment Contributions shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.* or to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i). FX Assessment Contributions do not constitute Guaranty Fund Contributions.
- (h) Upon an Event of Default or Events of Default occurring and FX Assessment Contributions becoming due, a Clearing Member liable to pay an FX Assessment Contribution shall be entitled to terminate its membership of the Clearing House with effect from the moment immediately prior to the time at which FX Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(d), an FX Clearing Member that terminates its membership in such circumstances shall have no further obligation to replenish the FX Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further FX Assessment Contribution payments pursuant to Rules 1107(c) and (d), Rules 209(c) (third sentence only), 209(d) (subject as aforesaid), 209(e)(i) and 209(e)(ii) shall apply in relation to any such termination. Any Clearing Member terminating its membership pursuant to this Rule 1107(h) shall give notice of the

same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for FX Assessment Contributions was made.

- (i) Upon an Event of Default or Events of Default occurring and FX Assessment Contributions becoming due, an FX Clearing Member with multiple Membership Categories and which is liable to pay an FX Assessment Contribution shall be entitled to terminate its status with the Clearing House as an FX Clearing Member (maintaining any other Membership Category or Categories) with effect from the moment immediately prior to the time at which FX Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(f), a Clearing Member that terminates its status as an FX Clearing Member in such circumstances shall have no further obligation to replenish the FX Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further FX Assessment Contribution payments pursuant to Rules 1107(c) and (d). Rule 209(f) shall apply in relation to any such termination. Any Clearing Member terminating its status as an FX Clearing Member pursuant to this Rule 1107(i) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for FX Assessment Contributions was made.

Part 13 [Not used]

Part 14 Transition Rules [No longer applicable: available on request.]

Part 15 Credit Default Swaps

Part 15 of the Rules does not apply to Energy Contracts or FX Contracts.

Rule 1501 Definitions

- (a) The term "**2010 PD Amending Directive**" means Directive 2010/73/EU.
- (b) The term "**Applicable Credit Event**", in relation to a CDS Contract, means any of the Credit Events specified in that CDS Contract as being applicable.
- (c) The term "**CADP**" or "**CDS Alternative Delivery or Settlement Procedure**" has the meaning set out in Rule 1514.
- (d) The term "**CADP Notice**" means a notice delivered to the Clearing House and issued jointly by a Matched CDS Buyer and Matched CDS Seller concerning CADP in respect of a Matched Pair and related Matched CDS Contracts, in the form specified in the Procedures.
- (e) The term "**CDS Buyer**" means a CDS Clearing Member (or, in the circumstances set out in the definition of "Matched Pair", the Clearing House) that is party to a CDS Contract as protection buyer.
- (f) The term "**CDS Procedures**" means the chapter of the Procedures relevant to CDS only.
- (g) The term "**CDS Seller**" means a CDS Clearing Member (or, in the circumstances set out in the definition of "Matched Pair", the Clearing House) that is party to a CDS Contract as protection seller.
- (h) The term "**Component Transaction**", in relation to any CDS Contract, has the meaning given to that term in the relevant Contract Terms.
- (i) The term "**Credit Event Announcement**" means a DC Credit Event Announcement or, where applicable in accordance with the Procedures, a Regional CDS Committee Credit Event Announcement.
- (j) The term "**Determining Body**" means the Credit Derivatives Determinations Committee or the Regional CDS Committee or other relevant body or person with jurisdiction to make the relevant determination under the Credit Derivatives Definitions or the Procedures.
- (k) The term "**Failed Amount**" has the meaning given to that term in Rule 1512.
- (l) The term "**Matched Pair**" means a CDS Buyer and CDS Seller matched by the Clearing House pursuant to Rule 1507 or Rule 1508, as applicable, where the CDS Buyer in such Matched Pair is the "**Matched CDS Buyer**" and the CDS Seller in such Matched Pair is the "**Matched CDS Seller**", provided that the Clearing House shall take the position of CDS Buyer or CDS Seller in any Matched Pair in order to create a Matched Pair for any CDS Seller or CDS Buyer which it is unable to match to another CDS Buyer or CDS Seller (other than the Clearing House), as the case may be.

Rule 1516 *Customer Accounts*

- (a) Until further notice by the Clearing House, there will be no Customer Account available to Clearing Members in respect of CDS Contracts or Margin relating to CDS Contracts. As a result, all CDS Clearing Members must ensure that any Margin provided to the Clearing House in relation to CDS Contracts is capable of being received by the Clearing House only in circumstances in which no acknowledgement by the Clearing House pursuant to the second sentence of Clause 5.3 of Clearing Membership Agreements applies in respect of the Margin. Accordingly, until such further notice:
 - (i) the third and fourth sentences of Clause 5.3 of the Clearing Membership Agreement shall not apply in relation to CDS Contracts;
 - (ii) Circular no. C08/032 is inapplicable in relation to CDS Contracts and Margin relating to CDS Contracts; and
 - (iii) notwithstanding any other provision of these Rules, the Rules shall be construed accordingly.

Rule 1517 *Supplemental Default Rules*

- (a) If an Event of Default occurs affecting a CDS Clearing Member, the Clearing House shall convene the CDS Default Committee. The CDS Default Committee shall have the competences specified in the Procedures.
- (b) The provisions of the CDS Procedures relevant to a default shall apply if the Defaulter is or was a CDS Clearing Member and shall amount to default rules for the purposes of these Rules and Applicable Laws.

Rule 1518 *CDS Committees and Dispute Panels*

Rule 117 and Part 10 (and equivalent provisions of any Clearing Membership Agreement) are hereby disapplied only to the extent that any matter is eligible for determination by a CDS Default Committee, Regional CDS Committee, Dispute Resolver, Dispute Resolution Panel, Credit Derivatives Determinations Committee, External Reviewer or ISDA in accordance with the CDS Procedures. This Rule applies in respect of a Person mentioned in the foregoing sentence unless and until any such Person resolves not to determine the matter concerned.

Part 16 []

Part 17 Foreign Exchange Contracts

Part 17 of the Rules does not apply to Energy Contracts or CDS Contracts.

Rule 1701 Definitions

- (a) The term "Currency Pair" in relation to any FX Contract is a reference to the two currencies named or otherwise referred to in such FX Contract by reference to which payments and/or deliveries under the FX Contract are determined.
- (b) The term "FX Market Price" means, in relation to any FX Forward Contract, on any day, the price which the Clearing House determines is to be treated, for the purposes of these Rules and the Procedures, as the value of such FX Forward Contract at the closing of such day, calculated in the VM Currency for that FX Forward Contract.
- (c) The term "FX Procedures" means those chapters of the Procedures relevant only to the Clearing of FX Contracts.
- (d) The term "Spot Price" means, for a Currency Pair, the notional foreign exchange rate between the two currencies in the Currency Pair for "spot" delivery having a cash settlement value of zero, as determined by the Clearing House.
- (e) The term "Standard Maturities" means the specified standard maturities for the provision of pricing data relating to FX Contracts by Clearing Members, as specified by the Clearing House in a Circular, either in respect of particular Currency Pairs or generally.
- (f) The term "VM Currency" means, in relation to any FX Contract, the currency in which FX Variation Margin will be payable for that FX Contract.
- (g) The term "FX Default Committee" each have the meaning given to those terms in the FX Procedures.
- (h) Any term used but not defined in this Part 17 or elsewhere in the Rules shall have the meaning given to that term in the FX Procedures.

Rule 1702 FX Forward Contracts

- (a) Each Business Day, the Clearing House will determine or amend the FX Market Price for all FX Forward Contracts, per Currency Pair, for each maturity in respect of which it is party to one or more FX Forward Contracts. For this purpose, each FX Clearing Member shall be obliged to provide, to the Clearing House on each Business Day, for all Currency Pairs, Spot Prices and forward points for all the Standard Maturities in respect of Financially-Settled FX Contracts. The Clearing House may consolidate price data from these and other sources to determine FX Market Prices for FX Forward Contracts and will determine such prices for FX Forward Contracts that do not then match a Standard Maturity by such interpolation methodology as the Clearing House shall consider appropriate.

- (b) The Clearing House shall be entitled to determine or amend any FX Market Price or forward point itself on any date, at its discretion, for any FX Forward Contract for a Currency Pair or to postpone, defer, cancel or suspend the publication of any FX Market Price (and in that case, obligations of FX Clearing Members and the Clearing House calculated with reference to an FX Market Price shall also be postponed, deferred, cancelled or suspended, as applicable), in accordance with the Procedures, including if:
- (i) FX Clearing Members fail on any day to submit data required to determine the relevant Market Price;
 - (ii) there are material errors in data provided by FX Clearing Members for this purpose;
 - (iii) material information is not available for the purposes of calculating the FX Market Price, due to a disruption affecting a particular country, its banks or otherwise;
 - (iv) there has been a Force Majeure Event; or
 - (v) the Clearing House at its discretion otherwise considers it appropriate to do so.

For such purposes, the Clearing House may extrapolate previously provided FX Market Prices for the purposes of determining FX Market Prices for FX Forward Contracts on other FX Value Dates.

- (c) Financially-Settled FX Contracts shall be settled in cash in accordance with the Contract Terms and the Procedures.
- (d) Upon each of the parties to an FX Forward Contract having made all necessary payments and deliveries in accordance with these Rules in respect of such FX Forward Contract, the Clearing Member and the Clearing House shall each be discharged and released from all rights, liabilities and obligations to one another arising pursuant to such FX Forward Contract.

Rule 1703 ***Margin issues particular to FX Contracts***

- (a) Clearing Members who are in net receipt of FX Variation Margin payments in a VM Currency shall be required to pay price alignment interest to the Clearing House on the total amount of such FX Variation Margin in that VM Currency received by it from time to time at the overnight rate specified by the Clearing House from time to time. The Clearing House shall be obliged to make payment of price alignment interest at the same rate to Clearing Members who have made net FX Variation Margin payments in a VM Currency to the Clearing House.
- (b) A Clearing Member which is party to an FX Forward Contract for which the Market Price is in its favour will be required, at the time specified in the Procedures, to pay to the Clearing House an amount equal to all the FX Variation Margin in respect of that FX Forward Contract that it is then deemed to hold, prior to settlement of that FX Forward Contract.

Rule 1704 **Separate treatment of FX Contracts for Proprietary Account and Customer Account**

FX Contracts to which a Clearing Member is party will be separately subject to the application of these Rules in relation to record-keeping and settlement for each of the following positions of the Clearing Member:

- (a) Party A positions in FX Contracts allocated to the Proprietary Account;
- (b) Party B positions in FX Contracts allocated to the Proprietary Account;
- (c) Party A positions in FX Contracts allocated to the Customer Account (if any); and
- (d) Party B positions in FX Contracts allocated to the Customer Account (if any).

Rule 1705 **Settlement of Financially-Settled Contracts**

- (a) Settlement of an FX Forward that is a Financially-Settled FX Contract shall take place pursuant to the payment of cash settlement amounts payable under the FX Forward between Clearing Members and the Clearing House and the release of FX Variation Margin in respect of such FX Forward, in both cases in accordance with Parts 3 and 5 of the Rules and the Finance Procedures. Party A shall be liable to pay the amount due under the Financially-Settled FX Contract to Party B (or Party B shall be liable to pay the amount due under the Financially-Settled FX Contract to Party A) as required under the Contract Terms, on the FX Value Date.

Rule 1706 **Supplemental Default Rules**

- (a) If an Event of Default occurs affecting an FX Clearing Member, the Clearing House shall convene the FX Default Committee. The FX Default Committee shall have the competences specified in the Procedures.
- (b) The provisions of the FX Procedures relevant to a default shall apply if the Defaulter is or was an FX Clearing Member and shall amount to default rules for the purposes of these Rules and Applicable Laws.

Rule 1707 **FX Default Committee**

Rule 117 and Part 10 (and equivalent provisions of any Clearing Membership Agreement) are hereby disapplied only to the extent that any matter is eligible for determination by an FX Default Committee in accordance with the FX Procedures. This Rule applies in respect of an FX Default Committee unless and until such committee resolves not to determine the matter concerned.

(X) FX PROCEDURES

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1. **ADDITIONAL DEFINITIONS**

- 1.1 The term "**Acceptance Notice**" has the meaning set out in paragraph 4.4(a).
- 1.2 The term "**Acceptance Time**" has the meaning set out in paragraph 4.5.
- 1.3 The term "**CLS**" means CLS Bank International or any successor thereto.
- 1.4 The term "**CM1**" has the meaning set out in paragraph 4.1.
- 1.5 The term "**CM2**" has the meaning set out in paragraph 4.1.
- 1.6 The term "**Cut-Off Time**", in respect of a Financially-Settled FX Contract, means 10:30 p.m. on the contract expiration date.
- 1.7 The term "**Eligible Employee**" has the meaning set out in paragraph 9.1.
- 1.8 The term "**Economic Terms**" for an FX Contract, has the meaning specified in the FX Contract Terms as applicable for the Set of FX Contract in question.
- 1.9 The term "**EMTA Template**", in respect of any Set of FX Contracts, means the most recently published Template Terms relevant to the currency pair involved, as published or endorsed by the Emerging Markets Trade Association or any successor thereto.
- 1.10 The term "**FX Confirmation**" means the confirmation between two parties to an FX Transaction, the details of which are submitted for Clearing.
- 1.11 The term "**FX Default Committee**" means a committee established pursuant to paragraph 9.1.
- 1.12 The term "**FX Default Committee Member**" has the meaning set out in paragraph 9.1.
- 1.13 The term "**FX Default Committee Participant**" has the meaning set out in paragraph 9.1.
- 1.14 The term "**FX Default Committee Participant List**" has the meaning set out in paragraph 9.2.
- 1.15 The term "**FX Fixing Date**" in respect of a Financially-Settled FX Contract, means the contract expiration date.
- 1.16 The term "**FX Risk Committee**" means the committee of that name established by the board of the Clearing House.
- 1.17 The term "**FX Settlement Facility**" means CLS or any other Person operating a facility approved by the Clearing House.
- 1.18 The term "**ICE FX Clearing System**" means ECS, banking and risk management systems, their associated user interfaces and application programming interfaces (APIs) or any other system or interface from time to time used for managing cleared transactions and/or positions in eligible products, asset management and making notifications to and from the Clearing House relating to settlement, and any other system notified to the FX Clearing Members and used by the Clearing House from time to time for the Clearing of FX Contracts.
- 1.19 The term "**ICE FX Gateway System**" means PTMS, ICE Block, ICE Link, their associated user interfaces and application programming interfaces (APIs) or such other system used by the Clearing House for the submission, confirmation and post-trade management of FX Transactions from time to time and any other system notified to the FX Clearing Members and used by the Clearing House from time to time for the submission, confirmation and trade management of FX Transactions.

- 1.20 The term "**Revocation Right**" will apply in respect of an FX Transaction submitted for Clearing: (a) if one of the Clearing Members for whose account the submission or confirmation for Clearing is made is a Defaulter; or (b) if and to the extent that either FX Contract which would arise on Clearing would have been void under Rule 403 (if Rule 403 applied to FX Contracts in addition to Energy Contracts) or capable of being treated as voidable under Rule 404(a) (if Rule 404(a) applied to FX Contracts in addition to Energy Contracts and the latter being read for purposes of this definition as if the words "in relation only to Energy Contracts," were not set out in any part of Rule 404(a) and "Energy Clearing Members" were read as "FX Clearing Members") or Rule 404(b).
- 1.21 The term "**Tier 1**" has the meaning given to that term in the Banking Consolidation Directive.
- 1.22 The term "**Trade Processing Platform**" means a person (which may without limitation be an Exchange, systematic internaliser or broker) that has satisfied the Clearing House's requirements to be able to act as an agent of one or more FX Clearing Members in the submission or confirmation of FX Transactions for Clearing, including having entered into an agreement with the Clearing House to act as an "Approved FX Trade Processing Platform" in relation to such submissions and confirmations and, in relation to any FX Clearing Member for which (and, as the case may be, for whose Affiliate) it acts as agent, has obtained that FX Clearing Member's authorisation in writing or through the ICE FX Clearing System to submit and confirm FX Transactions for Clearing as agent for that FX Clearing Member and accordingly, such a Trade Processing Platform will be a Representative of such FX Clearing Member for that purpose until the expiry of not less than one Business Day's written notice to the Clearing House given by such FX Clearing Member that such Trade Processing Platform is no longer, or is not, authorised to act as its agent and/or Representative. Where an Affiliate of an FX Clearing Member may submit or confirm FX Transactions for the account of that FX Clearing Member as referred to in paragraph 4.6, any person which, as a Trade Processing Platform, is a Representative of such FX Clearing Member shall be deemed to be additionally a Representative of such Affiliate for these purposes.
- 1.23 The terms "**Unscheduled Holiday**" and "**Valuation Postponement**", as applicable in respect of a Set of FX Contracts, each have the meaning set out in the relevant EMTA Template.
- 1.24 Capitalised terms used in these FX Procedures but not defined in this paragraph 1 shall have the meaning given to such terms in the Rules, the relevant FX Contract Terms or elsewhere in the Procedures (in that order of priority in the event of any conflict).

2. **ADDITIONAL MEMBERSHIP REQUIREMENTS FOR FX CLEARING MEMBERS**

- 2.1 Rule 201(j) provides that FX Clearing Members must meet such additional requirements applicable to FX Clearing Members as are specified in the Procedures.
- 2.2 The following additional membership requirements are specified for the purposes of Rule 201(j):
- (a) The FX Clearing Member is organized in a jurisdiction whose insolvency laws are acceptable to the Clearing House.
 - (b) The FX Clearing Member is a member of, or has access to, an FX Settlement Facility.
 - (c) The FX Clearing Member is a CLS settlement member, or settles in CLS through an Affiliate that is a CLS settlement member.
 - (d) The FX Clearing Member has executed an agreement concerning Intellectual Property (as referred to in Rule 406(g)) in a form acceptable to the Clearing House.
 - (e) If any FX Transactions to be submitted for clearing have an Affiliate of the FX Clearing Member (and not the FX Clearing Member) as their party, the FX Clearing Member has provided an executed authority, in a form acceptable to the Clearing House, from the relevant

Affiliate, pursuant to which the Clearing House is authorised to terminate FX Transactions to which the Affiliate is party.

- 2.3 If a Controller Guarantee has been provided, the Clearing Member to which the Controller Guarantee relates shall procure that the Controller:
- (a) at all times complies with the requirements of Rules 202(a)(iii), 202(a)(v), 202(a)(vi), 202(a)(x) and 202(a)(xiii) as if the Controller were a Clearing Member, *mutatis mutandis*;
 - (b) would not breach any of the requirements of Rule 203, were the Controller to be a Clearing Member subject to the requirements of Rules 203, *mutatis mutandis*; and
 - (c) makes all notifications that would be required under Rule 204 if the Controller were a Clearing Member, *mutatis mutandis*.
- 2.4 FX Clearing Members shall be obliged to:
- (a) co-operate and participate in all testing measures and initiatives relating to FX clearing; and
 - (b) be operationally able to interact with all aspects of the ICE FX Clearing System and ICE FX Gateway System;
 - (c) complete any necessary development required to comply with their obligations and clear FX Transactions, including any developments arising out of testing.

3. OTHER PROCEDURES

- 3.1 The Finance Procedures, Membership Procedures, Business Continuity Procedures and Complaints Procedures also apply in relation to FX Contracts and to FX Clearing Members.

4. SUBMISSION AND ACCEPTANCE OF FX CONTRACTS

- 4.1 Any FX Transaction which is submitted to the Clearing House by an FX Clearing Member via electronic means (including any FX Transaction forwarded to the Clearing House by a Trade Processing Platform or other Representative on behalf of a Clearing Member (or its Affiliate as described in paragraph 4.6) shall be capable of giving rise to an FX Contract under Rule 401(a)(xi) if the submission includes the information specified in paragraph 4.2, provided that the counterparty to the FX Transaction is also an FX Clearing Member and confirms the FX Transaction. Where an FX Transaction is submitted on behalf of both parties thereto by the same Trade Processing Platform, both parties will be treated as having submitted and confirmed the FX Transaction, without further reference to either of the FX Clearing Members. If a Trade Processing Platform only acts as a Representative of one FX Clearing Member that is party to an FX Transaction, then that FX Transaction must be confirmed by the other FX Clearing Member prior to it being accepted for Clearing. Each duly appointed Trade Processing Platform shall be treated as a Representative of each Clearing Member on whose behalf it submits an FX Transaction solely for the purposes of the submission and confirmation of data relating to FX Transactions. Pursuant to Rule 401(a)(xi), if an FX Transaction is so submitted and duly confirmed to the Clearing House by the parties thereto, each of which is an FX Clearing Member ("CM1" and "CM2") and then accepted by the Clearing House for Clearing pursuant to an Acceptance Notice (and the other provisions of the Rules complied with): (i) CM1 will be deemed to have entered into an FX Contract with the Clearing House as its counterparty rather than CM2; and (ii) CM2 will be deemed to have entered into an FX Contract with the Clearing House as its counterparty rather than CM1. In each case, the FX Contract will be on the Contract Terms specified in the Rules and Procedures. Rules 402(b) and 1702 make provision for the effect of this process on the rights, liabilities and obligations of CM1 and CM2 under the FX Transaction and specify the terms of resulting cleared FX Contracts.

- 4.2 Transaction registration for FX Transactions shall take place through the ICE FX Gateway System and ICE FX Clearing System. Only FX Clearing Members (including their duly appointed Representatives) may submit FX Transactions to the Clearing House. An FX Transaction may be submitted for Clearing by the same Trade Processing Platform acting as duly appointed Representative on behalf of two different FX Clearing Members who are party to the FX Transactions or by a Trade Processing Platform in respect of a trade intended to be recorded in a Customer Account. Each Business Day, during the time periods from time to time established by the Clearing House for Clearing on any day, FX Clearing Members shall file with the Clearing House or its duly appointed Representatives details of FX Transactions, showing for each FX Transaction:
- (a) the identity of both FX Clearing Members;
 - (b) which side of the FX Transaction each FX Clearing Member has taken;
 - (c) the relevant Economic Terms;
 - (d) whether for Customer Account or Proprietary Account;
 - (e) if for the Customer Account, a unique identifier attributable to the specific Customer;
 - (f) whether a standard option for settlement outside the Clearing House applies (there being no such standard optionality for Financially-Settled FX Contracts); and
 - (g) such other information as may reasonably be required by the Clearing House (such requirement to have been notified previously by the Clearing House) to effect the verification and Clearing of the FX Transaction between the parties.
- 4.3 If an FX Confirmation of any FX Clearing Member does not correspond in all material respects with the FX Confirmation of its counterparty to such FX Transaction, the Clearing House may, prior to issuing an Acceptance Notice, reject such FX Transaction and notify the relevant FX Clearing Members, setting forth the basis of such rejection.
- 4.4 In relation to any FX Transaction submitted for Clearing:
- (a) The Clearing House shall give notice as soon as reasonably practicable (in a matched trade confirmation issued through the ICE FX Clearing System, or such other report or notice identified for the purpose, an "Acceptance Notice" which term excludes any transaction accept report (which report is not an Acceptance Notice)) in accordance with this paragraph 4.4 to the FX Clearing Members which have submitted and confirmed such FX Transaction. The Acceptance Notice will be given by electronic message. The Acceptance Notice has the effect of specifying that the Clearing House accepts such FX Transaction for Clearing and may not be issued unless such FX Transaction is submitted and confirmed in accordance with and meets the requirements established by the Rules and these FX Procedures.
 - (b) The Clearing House may decline to accept or may reject an FX Transaction for Clearing (in a transaction reject report, or such other report or notice identified for the purpose) if the FX Transaction does not pass validation tests, the FX Transaction is not confirmed by the other party, the Clearing House determines in good faith that, in accordance with paragraph 4.4(g), it should not accept or should reject such FX Transaction for Clearing or if the Clearing House determines that a Revocation Right would apply in respect of such FX Transaction or alleged FX Transaction. Subject to Part 4 of the Rules and this paragraph 4, an Acceptance Notice will result in the FX Clearing Member and the Clearing House entering into an FX Contract at the Acceptance Time. An FX Transaction may be submitted and confirmed for Clearing at any time up to 10:30 p.m. on a Business Day.
 - (c) FX Transactions will be subject to Acceptance Notices during the course of any Business Day. An FX Transaction which has been rejected may, if eligible in accordance with the Rules and

these FX Procedures, be re-submitted for Clearing in accordance with paragraph 4.4(a). An FX Transaction not confirmed for Clearing prior to 10:30 p.m. on a Business Day or on a day that is not a Business Day shall be deemed to have been submitted for Clearing at the time the FX Clearing System re-opens for submissions on the following Business Day, unless it has been withdrawn or rejected by that time.

- (d) No Acceptance Notice shall result in any Contract arising pursuant to Rule 401(a)(xi) until the relevant Acceptance Time, as determined under paragraph 4.5. With effect as from the Acceptance Time and unless and until an Acceptance Notice is reissued pursuant to paragraph 4.4(i)(i), the Acceptance Notice shall be definitive as to any FX Contracts entered into between the Clearing House and any FX Clearing Member, regardless of whether any FX Contract is based on any FX Transaction and regardless of any error.
- (e) After the Acceptance Time, an FX Contract may only be terminated (other than in accordance with its terms), rescinded or cancelled by the Clearing House: (i) pursuant to Rule 104, Rule 209, Rule 405, Rule 406 or Part 9 of the Rules; or (ii) if it is presented with an agreement in writing between the two original Clearing Members party to the submitted FX Transaction in question.
- (f) Each Clearing Member acknowledges and agrees that the Clearing House may rely, without additional investigation, on the terms of FX Transactions or apparent or alleged FX Transactions submitted or confirmed by a Trade Processing Platform that have been designated by such Trade Processing Platform as having been affirmed or confirmed by the relevant parties thereto (including as to the identity of the FX Clearing Members to be party thereto), and that each FX Clearing Member shall be party to any FX Contract arising as a result of such submission and confirmation. An FX Clearing Member may give not less than one Business Day's electronic notice to the Clearing House, in accordance with the Procedures, that a Trade Processing Platform is no longer authorised to submit or confirm FX Transactions on its behalf, and following expiry of that notice period, the Clearing House will not accept for Clearing any FX Transactions submitted or confirmed by such Trade Processing Platform that identify such FX Clearing Member (but without limiting the provisions of this paragraph with respect to any FX Transactions submitted before the expiry of that notice period).
- (g) The Clearing House may establish limits for FX Transactions of various types which may be submitted or confirmed by an FX Clearing Member for Clearing by reference to the expected change in the Margin requirements which would result from Clearing of such FX Transactions and may establish requirements for advance funding by an FX Clearing Member of all or part of the estimated Margin which would be applicable as a result of the acceptance for Clearing of FX Transactions of various types. Such limits or requirements will be set in accordance with the established risk procedures applicable to all FX Clearing Members (such procedures as determined in consultation with the FX Risk Committee). Any material change to the factors by reference to which the limits and/or requirements are set will be subject to consultation with the FX Risk Committee. Such limits and/or requirements may be amended from time to time by the Clearing House (provided that they are set in accordance with such procedures) and need not be identical for, or apply to, all FX Clearing Members. The Clearing House will give notice from time to time to each FX Clearing Member of the limits and requirements, if any, applying to that FX Clearing Member. The Clearing House may, without other reason, reject or refuse to accept for Clearing any FX Transaction for which a submitting or confirming FX Clearing Member is not in compliance with such limits and requirements, if any, applying to it. The provisions of this paragraph 4.4(g) are without prejudice and in addition to the Clearing House's powers under Part 6 of the Rules.
- (h) In relation to any FX Transaction with a trade date falling more than one Business Day prior to the date of submission:

- (i) FX Clearing Members must provide information in the form specified by the Clearing House concerning the FX Transactions they intend to submit for Clearing at least one Business Day prior to submitting or confirming any such FX Transaction for Clearing;
- (ii) the Clearing House may request the posting of additional Margin by an FX Clearing Member prior to the submission of such FX Transaction for Clearing and as a condition of it being in a position to issue an Acceptance Notice in respect of such FX Transaction;
- (iii) the Clearing House will be entitled to check with the relevant counterparty to the FX Transaction that such counterparty also intends to submit the FX Transaction for Clearing and may require Margin as aforementioned of that other Clearing Member; and
- (iv) an FX Clearing Member shall not submit or confirm such an FX Transaction for Clearing unless and until the Clearing House has provided its consent to such submission, in which case the submission, confirmation and acceptance of such FX Transaction shall then proceed in the same way as for other FX Transactions.

(i) FX Clearing Members will be able to verify their cleared FX Contracts through access to the ICE FX Clearing System and may elect to receive electronic clearing notices (not being Acceptance Notices) from the Clearing House. Clearing Members shall reconcile trades, adjustments, open positions and Margin requirements with the Clearing House on a daily basis and shall regularly check these reports and records issued by the Clearing House in order to confirm that they are accurate. Clearing Members must notify the Clearing House promptly upon becoming aware of any error. If an FX Contract arising pursuant to the Clearing of an FX Transaction for the account of two FX Clearing Members does not reflect, subject to the provisions of the Rules and Procedures, the terms of such FX Transaction which were submitted or confirmed or were intended to be submitted or confirmed or if there has otherwise been a bona fide error (but not in any other circumstances) then:

- (i) where either the details in the Acceptance Notice did not so reflect the terms of the FX Transaction actually submitted or confirmed for Clearing, the Clearing House will issue a corrected Acceptance Notice and the Contract Terms of the FX Contract shall be deemed to have been amended accordingly; and
- (ii) other than in circumstances falling in (i), at any time up to 2 Business Days following the relevant Acceptance Notice being issued, the affected FX Clearing Members may agree among themselves (subject to the consent of the Clearing House) to submit and confirm for Clearing, an opposite FX Transaction for the purpose of offsetting the net margin requirements and net exposures to the Clearing House resulting from the error, but such Clearing Members shall be bound by the terms of the relevant FX Contracts notwithstanding such error.

4.5 Rule 401(a)(xi) refers to a time to be specified pursuant to the Procedures for the acceptance of FX Contracts ("**Acceptance Time**"). The Acceptance Time shall be the time on a Business Day at which the Acceptance Notice was given. The Clearing House will specify, on or for each Acceptance Notice, the time on which such notice is given or becomes effective.

4.6

- (a) The Clearing House may accept the submission or confirmation of FX Transactions for clearing for the account of an FX Clearing Member from a Representative of such FX Clearing Member that is an Affiliate of such FX Clearing Member or from a Trade Processing Platform as the Representative of such Affiliate, provided that such Affiliate is at that time

duly designated for this purpose as an authorised Representative of the Clearing Member and such Trade Processing Platform is at that time duly designated as an authorised Representative of the FX Clearing Member.

- (b) Where an FX Transaction submitted or confirmed for clearing has as one of its parties an Affiliate of an FX Clearing Member then the resulting FX Contract shall have as its counterparty, as a result of Part 4 of the Rules, the FX Clearing Member and not the Affiliate and accordingly:
- (i) each Clearing Member submitting or confirming an FX Transaction to which an Affiliate was party shall be responsible for ensuring that any give-up or novation agreements or back-to-back FX transactions between it and its Affiliate come in to effect and are properly documented at the appropriate time;
 - (ii) for the avoidance of doubt, each relevant Affiliate shall be treated as a Customer for purposes of the Rules and, accordingly, the Clearing House is not party to any Contract with the Affiliate and shall have no liability to the Affiliate;
 - (iii) the Affiliate shall be deemed to be on notice of this provision and shall (in the absence of evidence of a contrary intention under the relevant FX Transaction) be deemed to agree to its application by the Customer's conduct in having the relevant FX Transaction submitted or confirmed for Clearing, so that Rules 402(b) and 405 shall operate in respect of any rights, liabilities or obligations of the Affiliate relating to, or arising out of or in connection with any FX Transaction (whether pursuant to contract, tort, equity, restitution or otherwise, pursuant to the laws of any jurisdiction, which fall or fell due for performance to any Person other than its affiliated Clearing Member in relation to the FX Transaction in question, excluding any performance due prior to the time at which an FX Contract arises pursuant to Rule 401(a)) in the same way as such provisions apply in relation to the Transaction Rights or Obligations of the Clearing Member.

- 4.7 Where, prior to the Acceptance Time, any FX Transaction is rejected for Clearing or the Acceptance Notice given in respect of it is revoked, the Transaction Rights or Obligations of the FX Clearing Members which are party thereto shall be deemed never to have been released and discharged pursuant to Rule 402(b).
- 4.8 Nothing in this paragraph 4 of itself is intended to result in any FX Transaction or Transaction Rights or Obligations being void or voided as between the original parties thereto.
- 4.9 An FX Transaction which would give rise to an FX Contract shall cease to be eligible for submission and acceptance after the relevant Cut-Off Time. FX Clearing Members shall use reasonable endeavours not to submit or confirm any FX Transaction which is not eligible for Clearing pursuant to this paragraph 4.9 as at the time such FX Transaction is submitted or confirmed for Clearing. Each FX Clearing Member shall notify the Clearing House as soon as reasonably practicable if it is or becomes aware that any FX Transaction submitted or confirmed by it for Clearing (but in respect of which no Acceptance Notice has become effective) is or becomes ineligible for Clearing pursuant to this paragraph 4.9. Any FX Transaction which is submitted or confirmed for Clearing but which is, or becomes before the relevant Acceptance Time, ineligible for Clearing may be rejected by the Clearing House before the relevant Acceptance Time (whether or not the relevant provision of this paragraph 4.9 applied at the time that the FX Transaction was submitted or confirmed for Clearing). If an FX Transaction was eligible for Clearing at the time it was submitted or confirmed for Clearing but becomes ineligible for Clearing pursuant to paragraph 4.9 after the time that it was submitted or confirmed for Clearing, then the Clearing House will use reasonable endeavours not to issue an Acceptance Notice in respect of that FX Transaction.

- 4.10 Without prejudice to the provisions of paragraph 4.4 which provide for FX Contracts to arise only at the Acceptance Time, the trade date recorded for an FX Contract arising from an Acceptance Notice in relation to an FX Transaction accepted for Clearing may be the trade date of that FX Transaction provided that such date is not more than one Business Day before the time of the Acceptance Notice, or such other date as is specified by the Clearing House.
- 4.11 The ICE FX Clearing System will enable Clearing Members to maintain, update and enrich records in respect of Customer Account or Proprietary Account data and other data relating to FX Contracts, provided that no such changes shall result in any amendments to the existence or terms of FX Contracts. Where they are for the Customer Account, FX Contracts must be allocated to a particular Customer-related identifier within two Business Days of the Acceptance Notice. Any failure to do so will result in the FX Contract being recorded in a temporary holding account within the Customer Account, and may result in higher Margin requirements to those that would otherwise be applicable.
- 4.12 FX Clearing Members may submit and confirm arrangements similar to FX Transactions for Clearing, where the same FX Clearing Member is effectively recorded as being both parties to the same FX Transaction. This situation may arise where the transaction reflects an internal accounting arrangement between different branches or departments of the same Clearing Member or is established for the purposes of providing prime brokerage services, or clearing of the transactions of Affiliates or Customers. In such circumstances, two opposite FX Contracts shall arise between the Clearing Member and the Clearing House in the same manner as for FX Transactions.
- 4.13 FX Swap transactions shall not of themselves be submitted for Clearing. Instead, each of the two FX Forward legs of an FX Swap transaction may be eligible to be submitted separately for Clearing. If the Cut-Off Time has already passed for one of those FX Forward legs, the other FX Forward leg in the swap may still be submitted for Clearing as a separate FX Transaction that is a Forward.

5. PRICING DATA

5.1 Provision of pricing data to the Clearing House

- (a) Pricing data is required to be provided to the Clearing House by FX Clearing Members pursuant to Rule 1702 and may be used by the Clearing House for purposes of calculating FX Variation Margin and for other risk management purposes based on specific times or time frames specified by the Clearing House. The actual pricing data that is required to be provided by Clearing Members will be specified in the Clearing House's risk policies from time to time, as the same are updated and amended from time to time.
- (b) Pricing data must be submitted in the form prescribed by the Clearing House from time to time.
- (c) Pricing data in respect of a particular Business Day must be received no later than 10:30 pm on the same Business Day.
- (d) The Clearing House may disregard the pricing data provided by an FX Clearing Member if such pricing data for any Standard Maturity of an FX Contract is among the two highest or two lowest of the various data provided to the Clearing House by FX Clearing Members on that date.

5.2 Impact of events

- (a) In the event of any Unscheduled Holiday or Valuation Postponement affecting a currency or sovereign relevant to an FX Contract or Set or Sets of FX Contracts, the Clearing House will generally seek to follow the relevant EMTA Template as a basis for the determining the obligations of FX Clearing Members and the Clearing House on an FX Value Date or for

determining any actions that it takes to postpone, defer, cancel or suspend the publication of any FX Market Price pursuant to Rule 1702(b)(iii), (iv) or (v).

- (b) If the Clearing House wishes to determine any FX Market Price that is used for the purposes of calculating the obligations of FX Clearing Members and the Clearing House on an FX Value Date for an FX Contract or to postpone, defer, cancel or suspend the publication of any FX Market Price pursuant to Rule 1702(b)(iii), (iv) or (v) other than in accordance with the relevant EMTA Template, then the matter will be raised with the FX Risk Committee, where practicable in advance of the Clearing House taking any action or, failing that, as soon as reasonably practicable thereafter.

6. SETTLEMENT OF FX FORWARD CONTRACTS

- 6.1 For Financially-Settled FX Contracts, Parts 3 and 5 of the Rules and the Finance Procedures apply in respect of payments arising from settlement obligations in the same way as they apply to other payments to and from the Clearing House. In accordance with the Finance Procedures and Part 3 of the Rules, FX Variation Margin repayable by a Clearing Member or the Clearing House and the net settlement price as determined on the FX Fixing Date shall be offset against one another with the result that effectively only the difference between such amounts shall be payable as between the Clearing House and any Clearing Member on the FX Value Date.
- 6.2 No FX Clearing Member shall, or shall be entitled to, rescind any settlement instruction or otherwise refuse to settle any FX Contract in the manner specified in the Rules and these FX Procedures or otherwise directed by the Clearing House pursuant to the Rules and these FX Procedures.
- 6.3 Original FX Margin, FX Variation Margin and FX Delivery Margin shall continue to be called and payable in relation to any FX Forward Contract which is to be settled, as calculated in accordance with the Rules. No Original FX Margin or FX Delivery Margin requirements shall apply in respect of an FX Forward Contract as from the time that settlement is complete.
- 6.4 The Clearing House may assess additional delivery or settlement Margin:
 - (a) to mitigate the risks associated with being party to FX Contracts on a gross basis; and
 - (b) otherwise in accordance with Part 5 of the Rules.

7. PRICE ALIGNMENT INTEREST

- 7.1 Price alignment interest will be calculated daily, based upon the applicable overnight interest rate for each of the FX Variation Margin currencies.
- 7.2 Weekends and currency holidays are taken into account for purposes of calculating price alignment interest.
- 7.3 Price alignment interest is paid by Clearing Members receiving FX Variation Margin and received by Clearing Members paying FX Variation Margin.
- 7.4 Price alignment interest is paid only when the Clearing Member to whom FX Variation Margin is payable has use of FX Variation Margin funds. FX Variation Margin payments that are reserved or otherwise encumbered is not eligible for price alignment interest.

8. CLEARED FX PRODUCTS: ELIGIBLE SETS

- 8.1 Details of the nature of the Sets of FX Contracts which are eligible for Clearing (without reference to each FX Value Date) will be notified from time to time by the Clearing House to Clearing Members by a Circular.

8.2 The Clearing House may add to, amend or make deletions from the list of Sets of FX Contracts eligible for Clearing by issuing a Circular. Any such addition, amendment or deletion (other than the addition of additional FX Contract Sets that are identical to other FX Contract Sets but with different FX Value Date) shall be made following consultation with the FX Risk Committee.

9. **FX DEFAULT COMMITTEE**

9.1 The FX Default Committee shall be comprised of not more than three FX Committee-Eligible Clearing Members designated in accordance with paragraph 9.2 (each, an "**FX Default Committee Participant**"). The FX Default Committee shall act as a committee of the Clearing House with powers under the Rules pursuant to Rule 114. Each FX Default Committee Participant shall designate an employee of it or one of its Affiliates with FX trading experience by notice in writing to the Clearing House (an "**Eligible Employee**") to serve as its representative on the FX Default Committee, along with one or more alternates in the event such person is not available on a timely basis (the designated employee or alternate, as applicable, an "**FX Default Committee Member**"). An FX Default Committee Participant may replace its designated FX Default Committee Member or alternate(s) with an Eligible Employee from time to time by notice in writing to the Clearing House.

9.2 The Clearing House shall randomly order all FX Committee-Eligible Clearing Members into a list (the "**FX Default Committee Participant List**"). The procedure for any random ordering for the purposes of this paragraph 9.2 shall be determined by the Clearing House at its discretion. For this purpose, if two or more FX Committee-Eligible Clearing Members are or become Affiliates, as determined by the Clearing House, they shall be treated as one on the FX Default Committee Participant List; provided that, notwithstanding the foregoing, FX Committee-Eligible Clearing Members that are Affiliates but that make separate contributions to the FX Guaranty Fund shall be treated as separate on the FX Default Committee Participant List but a maximum of one FX Default Committee Participant representing all FX Committee-Eligible Clearing Members that are Affiliates shall be entitled to sit on any FX Default Committee established in accordance with these Procedures at a particular time.

9.3 The FX Default Committee for the initial Relevant FX Default Committee Period shall be comprised of the first three FX Committee-Eligible Clearing Members on the FX Default Committee Participant List. For each Relevant FX Default Committee Period thereafter, the then current FX Default Committee Participants shall cease to be FX Default Committee Participants and shall be moved to the end of the FX Default Committee Participant List, and the next three FX Committee-Eligible Clearing Members on the FX Default Committee Participant List shall be FX Default Committee Participants. If at any time, there are fewer than three FX Committee-Eligible Clearing Members on the FX Default Committee Participant List, all such FX Committee-Eligible Clearing Members shall be FX Default Committee Participants. The "**Relevant FX Default Committee Period**" will be six calendar months (i.e., January through June and July through December), unless otherwise specified by the Clearing House.

9.4 Any FX Clearing Member that ceases being an FX Committee-Eligible Clearing Member shall be removed from the FX Default Committee Participant List and, if such Clearing Member is serving on the FX Default Committee at the time of removal, shall be replaced on the FX Default Committee by the next FX Committee-Eligible Clearing Member on the FX Default Committee Participant List. Any Clearing Member that becomes (or resumes being) an FX Committee-Eligible Clearing Member shall be added to the end of the FX Default Committee Participant List.

9.5 If the Clearing House determines, whether upon the request of such FX Default Committee Participant or upon the Clearing House's own initiative, that any FX Default Committee Participant has a conflict or lacks impartiality with regard to an action to be undertaken by the FX Default Committee (e.g., it or its Affiliate is the subject of the Event of Default), is not available to participate with regard to such actions in a timely manner, or should for any other reason be removed from or not participate in actions to be undertaken by the FX Default Committee, the Clearing House shall remove such FX Default Committee Participant and, as promptly as practicable under the circumstances, replace it with the next FX Committee-Eligible Clearing Member on the FX Default Committee Participant List and, pending

such replacement, the remaining FX Default Committee Members shall continue to perform the responsibilities of the FX Default Committee.

- 9.6 To the extent permitted by Applicable Laws, no FX Default Committee Member or FX Default Committee Participant shall be liable to the Clearing House, any Defaulter, any other Clearing Member or any other person for any actions taken or not taken in good faith in its role as FX Default Committee Member or FX Default Committee Participant.
- 9.7 The FX Default Committee shall be entitled to:
- (a) assist and advise the Clearing House in determining and executing any transactions under Rules 902 or 903 in FX Contracts only;
 - (b) assist the Clearing House in determining (and thereafter adjusting) any sale or transfer prices, target prices or minimum target prices for such FX Contracts;
 - (c) assist the Clearing House in relation to the unwinding of any FX Contracts and otherwise as provided in the Rules and Procedures in relation thereto;
 - (d) provide the Clearing House with recommendations as to how prudently to unwind the FX Contracts of a Defaulter that was an FX Clearing Member and the related close-out of FX Contracts and any hedging transactions; and
 - (e) without prejudice to the generality of the foregoing, assist and advise the Clearing House in determining whether or not the entry into of any hedging transactions under Rule 902(b) in relation to FX Contracts would achieve, or would be likely to achieve, the purpose of an orderly unwind of any Contracts to which a Defaulter is party or a reduction of the risk specified in Rule 902(b).

The minimum target price shall be established by the Clearing House in consultation with the FX Default Committee (taking into account the results of any prior auctions) as the price, as determined in the reasonable discretion of the Clearing House (taking into account the interests of non-defaulting Clearing Members), at which it would be reasonable for the Clearing House to enter into relevant FX Contracts or hedging contracts under Rule 902. Any minimum target price so determined by the Clearing House may be adjusted by the Clearing House in consultation with the FX Default Committee for market changes, and to take into account the result of any sales or auctions under Rules 902 and 903, from the time of the initial determination of the minimum target price to the time any new Contracts are entered into.

- 9.8 Each FX Default Committee Participant and FX Default Committee Member (each, for purposes of this paragraph 9.8, a "**Covered Party**") shall be subject to the provisions of Rule 106 as if it were the Clearing House. Each Covered Party further agrees not to use any information subject to Rule 106 ("**Confidential Material**") for its own benefit or the benefit of any of its Affiliates. In the event that a Covered Party is served with or otherwise subject to legal process (including subpoena or discovery notice) requiring it to testify about, to produce, or otherwise to divulge Confidential Material, to the extent permitted by law the Covered Party subject to such process will as soon as practicable inform the Clearing House so that the Clearing House may seek a protective order, injunction or other remedy. In the event that such protective order, injunction or other remedy has not been obtained and the Covered Party is advised, in the opinion of counsel, that it is legally compelled to disclose any of the Confidential Material, the Covered Party may disclose only such Confidential Material so advised to be disclosed and shall not otherwise disclose Confidential Material.
- 9.9 Each FX Default Committee Participant and FX Default Committee Member shall be responsible for its own costs associated with its service in such position.

- 9.10 The Clearing House acknowledges and agrees that it will consider in good faith the recommendations of any FX Default Committee in relation to matters over which the FX Default Committee has competence.